

No. 12634

United States
Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

DOROTHY SHARP,

Appellee.

Transcript of Record

Appeal from the District Court of the United States
Southern District of California,
Central Division.

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court, Southern District of California, Central Division.

No. 9996-B

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOROTHY SHARP, DOES I to X,

Defendants.

COMPLAINT FOR TREBLE DAMAGES,
RESTITUTION AND INJUNCTION

I.

Plaintiff brings this action for restitution pursuant to Section 205(a) of the Emergency Price Control Act of 1942, as amended, and brings this action also for injunction, restitution and treble damages pursuant to Sections 205 and 206 of the Housing and Rent Act of 1947, as amended, (Public Law 31, 81st Congress, 1st Session).

II.

Jurisdiction of this action is founded upon Section 205(c) of the Emergency Price Control Act of 1942, as amended, and Section 206 of said Housing and Rent Act of 1947, as amended. [2*]

III.

At all times mentioned herein prior to July 1, 1947, the housing accommodations located at 430 Daisy Ave., and 537 Melrose Way, Long Beach,

* Page numbering appearing at bottom of page of original Reporter's Transcript.

California, have been subject to maximum rents authorized and established pursuant to the Emergency Price Control Act of 1942, as amended. At all times mentioned herein on and after July 1, 1947, said housing accommodations have been subject to maximum rents authorized and in effect pursuant to said Housing and Rent Act of 1947, as amended. At all times mentioned in this complaint said premises have been within the Los Angeles Defense Rental Area.

IV.

That the defendants Doe I to Doe X are the fictitious names of the defendants whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered this complaint may be amended by inserting such true names in the place and stead of such fictitious names. Wherever the word "defendant" is used in this complaint, it shall include all of the defendants individually and collectively herein sued.

V.

Defendant received from persons for the use and occupancy of said accommodations rents in excess of the maximum rents established pursuant to said Acts. A Schedule is attached hereto and by reference made a part hereof, as though fully set out herein. Said Schedule states the names of the persons using and occupying said accommodations, and the period of occupancy by such persons. Said Schedule states the rents charged to and received from said persons for such use and occupancy during said period. Said

Schedule states the applicable maximum rent. Said Schedule states the amount of the overcharges.

VI.

In the judgment of the Housing Expediter the defendant has engaged and is about to engage in acts and practices which constitute and will constitute violations of provisions of said Acts and of regulations, orders [3] and requirements issued thereunder.

Wherefore, the plaintiff demands:

A. Judgment for the plaintiff to recover of the defendant treble the total amounts charged to persons, or demanded, accepted or received by the defendant from persons as rent for the use and occupancy of the housing accommodations described in this complaint, within one year prior to the filing of this complaint, which were in excess of the maximum rents established pursuant to said Housing and Rent Act of 1947, as amended, and further that:

B. The defendant be ordered and directed to pay to the Treasurer of the United States for and on behalf of all persons entitled thereto a refund of all amounts in excess of the maximum rents established pursuant to said Acts which were received by the defendant, his agents or employees since the date maximum rents were established for said housing accommodations pursuant to said Acts; provided that refunds made by the defendant for and on be-

half of such persons in compliance with the direction of the Court for rents received within one year prior to the bringing of this action, shall be deducted from the amount of the judgment prayed for in the preceding Paragraph "A"; or, in the alternative, that the defendant be ordered and directed to pay the amount of the overcharge referred to in this Paragraph "B" to the United States of America, and

C. A preliminary and final injunction enjoining the defendant, his agents, servants, employees, and all persons in active concert or participation with him, from:

1. Directly or indirectly charging, demanding, accepting or receiving amounts in excess of the maximum rent established pursuant to the aforesaid Acts, and said Acts as hereafter amended or superseded and the regulations issued thereunder.

2. Directly or indirectly discontinuing, withholding, suspending or shutting off the supply of services, including utilities, heat, hot and cold [4] water, janitorial and maid service, furniture, furnishings, equipment, living space and all other services which the landlord is required to provide by said Acts and the regulations issued pursuant thereto, or threatening to do any of the foregoing with reference to the above described housing accommodations or any other controlled housing accommodations owned, managed or controlled by defendant.

3. Engaging in any action or course of action the purpose of which is to evict illegally tenants from the above-described premises, or any other housing accommodations owned, controlled or managed by the defendant, and from evicting said tenants in any form or manner contrary to said Housing and Rent Act of 1947, as amended, and regulations issued pursuant thereto as heretofore or hereafter amended or superseded.

4. Violating said Housing and Rent Act of 1947, as amended, and any of the regulations issued pursuant thereto, as heretofore or hereafter amended or superseded.

/s/ ASHER SCHEIR,

Attorney, Office of the
Housing Expediter. [5]

Housing Accommodations Located at 430 Daisy Ave. and
537 Melrose Way, Long Beach, California

Unit	Name of Tenant	Period of Overcharges	Amount Rent Paid	Maximum Rent	Amount of Overcharges
537	Lily Dolci	11- 5-47 to 12- 5-47	\$30.00 mo.	\$29.00 mo.	\$ 1.00
	(Gutierrez)	12- 5-47 to 1- 5-48	35.00	29.00	6.00
430	A. J. Lynch	6-11-48 to 7-10-48	100.00 mo.	37.50 mo.	62.50
		Cleaning Deposit (\$25.00)			
		7-11-48 to 6-11-49	75.00 mo.	37.50 mo.	412.50
Total amount of overcharges					\$482.00

Schedule referred to in Paragraph V of Plaintiff's first cause of action.

[Endorsed]: Filed July 15, 1949. [6]

[Title of District Court and Cause.]

No. 9996-HW

ANSWER TO COMPLAINT FOR TREBLE
DAMAGES, RESTITUTION AND INJUNC-
TION

Comes Now the Defendant, Dorothy Sharp, and appearing for herself alone and no other defendant, denies and alleges as follows, to wit:

I.

Answering paragraph V of plaintiff's complaint, this answering defendant denies generally and specifically each and every allegation in said complaint contained, the same as though each of said allegations therein contained were herein set out and specifically denied and particularly, this answering defendant denies that Lilly Dolci paid an overcharge of One (\$1.00) Dollar in rent as alleged in the schedule attached to said complaint and particularly alleges that the One (\$1.00) Dollar alleged to be an overcharge was the amount paid for an extra bed by the said Lilly Dolci, and particularly alleges that there was no overcharge in the Gutierrez matter amounting to Six (\$6.00) Dollars a month, or any other amount, and particularly denies that there was an overcharge of Sixty-two Dollars and fifty cents (\$62.50) a month in the A. J. Lynch matter, or any other sum, or sums, and particularly denies that there was any overcharge of Four Hundred

Twelve Dollars and Fifty Cents (\$412.50) on the A. J. Lynch matter, or any overcharge in any amount whatsoever; [7] and particularly alleges that any aparent overcharge is the direct result of the unlawful conduct of employees of the Office of Housing Expediter in Long Beach, California.

II.

Answering Paragraph VI of plaintiff's complaint, this answering defendant denies generally and specifically each and every allegation in said paragraph VI contained, the same as though each of said allegations had herein been set out and specifically denied.

And as a Further, Separate, Affirmative and Second Defense Hereto, This Answering Defendant Alleges:

I.

That the complaint in this matter was filed on or about the 9th day of August, 1949; that the Housing Act provides that no recovery can be made or can a cause of action be maintained for rents alleged to have been over the ceiling price for more than one year prior to the filing of the complaint in this matter, and therefore, any attempt in said complaint to obtain redress for more than one year prior to August 9th, 1949, are barred by the provisions of said Act.

And as a Further, Separate, Affirmative and Third

Defense Hereto, This Answering Defendant Alleges:

I.

That prior to the 11th of June, 1948, the ceiling price upon the accommodations herein sued upon was Ninety (\$90.00) Dollars per month; that thereafter on the 11th day of June, 1948, the defendant in this action entered into a lease with Mr. and Mrs. A. J. Lynch, wherein the defendant herein agreed to lease all the rooms in said housing accommodations to the said Lynch for Seventy-five (\$75.00) Dollars per month, which was fifteen (\$15.00) Dollars under the ceiling in force at said time; that thereafter on or about the 10th day of August, 1948, the employees of the Housing Expediter called this answering defendant into their office and in the presence of witnesses the said employees of the said Housing Expediter by threat and intimidations made in the presence [8] of witnesses did compel this defendant to sign a new rent schedule which reduced the ceiling rents to less than the amount in force and effect upon the date said lease was executed. The said conduct on the part of said employees of the said Husing Expediter was unlawful and in violation of the laws and statutes of the United States of America and were made and done by said employees for the purpose of embarrassing and taking advantage of this defendant and amounted to coercion in forcing this defendant to sign papers which she should not have been made to sign.

Wherefore, this answering defendant prays that plaintiff take nothing by its said cause of action and that she go hence with her costs herein expended.

MATOT, GABRIELSON &
MANLEY,

By /s/ KENNETH E. MATOT,
Attorneys for Defendant,
Dorothy Sharp.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 4, 1950. [9]

[Title of District Court and Cause.]

PLAINTIFF'S REQUEST FOR ADMISSIONS
UNDER RULE 36

Plaintiff requests the defendant Dorothy Sharp, within ten days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That for all times pertinent to this suit, the defendant Dorothy Sharp was the landlord of the housing accommodations located at 537 Melrose Way and 430 Daisy Avenue, Long Beach, California.

2. That Lily Dolci, now known as Lily Dolci Gutierrez, occupied the housing accommodations

located at 537 Melrose Way from November 5, 1947, to January 5, 1948.

3. That said defendant Dorothy Sharp received from said Lily Dolci, now known as Lily Dolci Gutierrez, the sum of \$30.00 as rent for the use and occupancy of the housing accommodations located at 537 Melrose Way, for the [11] period commencing November 5, 1947, to December 5, 1947.

4. That said defendant Dorothy Sharp received from said Lily Dolci, now known as Lily Dolci Gutierrez, the sum of \$35.00 as rent for the use and occupancy of the housing accommodations located at 537 Melrose Way for the period December 5, 1947, to January 5, 1948.

5. That on or about March 13, 1947, the Area Rent Director for the Los Angeles Defense Rental Area issued an order adjusting maximum rent, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 1.

6. That said order, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 1, is genuine.

7. That said order, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 1, is a part of the official records of the Office of the Housing Expediter.

8. That said order, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 1, established the maximum rent for said housing accom-

modations located at 537 Melrose Way for all times pertinent to this suit.

9. That for all times pertinent to this suit, the maximum rent for said housing accommodations located at 537 Melrose Way, Long Beach, California, was the sum of \$29.00 per month.

10. That A. J. Lynch and family occupied the housing accommodations located at 430 Daisy Avenue, Long Beach, California, from June 11, 1948, to June 11, 1949.

11. That no person or persons other than members of the family of A. J. Lynch occupied said housing accommodations located at 430 Daisy Avenue during the period June 11, 1948, to June 11, 1949.

12. That said defendant Dorothy Sharp received from said A. J. Lynch the sum of \$100.00 as rent for said housing accommodations located at 430 Daisy Avenue for the period June 11, 1948, to July 10, 1948.

13. That \$25.00 of said sum of \$100.00 received by the defendant Dorothy Sharp for the period June 11, 1948, to July 10, 1948, was received as a cleaning deposit.

14. That no part of said cleaning deposit of \$25.00 has been refunded [12] by the defendant Dorothy Sharp to said tenant A. J. Lynch or anyone representing said A. J. Lynch.

15. That said defendant Dorothy Sharp received from said A. J. Lynch the sum of \$75.00 per month

each month as rent for said housing accommodations located at 430 Daisy Avenue for the period July 11, 1948, to June 11, 1949.

16. That on or about January 14, 1949, said Dorothy Sharp filed a registration statement with the Office of the Housing Expediter Area Rent Office, Los Angeles Defense Rental Area, affecting the housing accommodations located at 430 Daisy Avenue, Long Beach, California, a true copy of which registration statement is hereto attached marked Plaintiff's Exhibit No. 2.

17. That said registration statement, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 2, is genuine.

18. That said registration statement, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 2, is a part of the official records of the Office of the Housing Expediter.

19. That the signature appearing on said registration statement, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 2, is the signature of the defendant Dorothy Sharp.

20. That said signature appearing on the registration statement, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 2, was affixed thereto by the defendant Dorothy Sharp.

21. That on or about March 23, 1949, the Area Rent Director for the Los Angeles Defense Rental Area issued an order affecting the housing accommodations located at 430 Daisy Avenue, Long Beach,

California, Decreasing Maximum Rent Requiring Refund to Tenant. A true copy of said order is hereto attached marked Plaintiff's Exhibit No. 3.

22. That said order, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 3, is genuine.

23. That said order, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 3, is a part of the official records of the Office of the Housing Expediter. [13]

24. That said order, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 3, established the maximum rent for all times pertinent to this suit for the housing accommodations located at 430 Daisy Avenue, Long Beach, California.

25. That no appeal has been taken, pursuant to the Procedural Regulations issued pursuant to the Housing and Rent Act of 1947, as amended, by the defendant Dorothy Sharp from said order, a true copy of which is hereto attached marked Plaintiff's Exhibit No. 3.

26. That no part of the monies received by the defendant Dorothy Sharp from Lily Dolci, now known as Lily Dolci Gutierrez, has been refunded by said defendant Dorothy Sharp to said tenant.

27. That no part of the monies received by the defendant Dorothy Sharp from said A. J. Lynch has been refunded to said A. J. Lynch pursuant to the order of the Area Rent Director issued March 23, 1949, a true copy of which is hereto attached

marked Plaintiff's Exhibit No. 3.

28. That no civil action has been filed by said tenants or either of them against said defendant Dorothy Sharp on account of any of the matters alleged above.

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, each of the above matters shall be deemed admitted unless within ten days of the service of this request, the defendant serves upon the plaintiff the sworn statement or written objections described in said Rule 36 of the Federal Rules of Civil Procedure.

Dated: Los Angeles, California, this 13th day of January, 1950.

ABE I. LEVY,

By /s/ ASHER SCHEIR,

Attorney, United States of
America.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 16, 1950. [14]

[Title of District Court and Cause.]

DEFENDANT'S ANSWER TO PLAINTIFF'S
REQUEST FOR ADMISSION UNDER
RULE 36

State of California,

County of Los Angeles—ss.

Comes now the defendant Dorothy Sharp, in answer to plaintiff's request for admissions under Rule 36 and being first duly sworn, deposes and admits, denies and alleges as follows, to wit:

1. Admits the allegations as contained in specification #1 of plaintiff's request.

2. Admits the allegations contained in specification #2 of plaintiff's request.

3. Denies generally and specifically every allegation contained in paragraph 3 of plaintiff's request. Alleges the fact to be that the defendant only received the sum of \$29.00 as rent for said premises from Lily Dolci. [18]

4. Denies generally and specifically each and every allegation contained in plaintiff's specification #4. Alleges the fact to be that the amount received by the defendant was the maximum amount collectable.

5. Answering paragraphs 5, 6 and 7 of plaintiff's request for admission, this answering defendant has no knowledge, information or belief sufficient to enable her denial on such lack of information or belief she denies each and every allegation therein contained.

6. Answering specification #8 of plaintiff's request for admission, this answering defendant has no knowledge, information or belief sufficient to enable her to answer such allegation and basing her

denial on such lack of information or belief, she denies each and every allegation therein contained.

7. Denies generally and specifically all the allegations contained in specification #9 of plaintiff's request for admissions alleges the fact to be that on the 11th day of June, 1948, the ceiling rent on the premises located 537 Melrose Way, Long Beach, California, was the sum of \$95.00 per month.

8. Admits the allegations contained in specification #10 of plaintiff's request for admission.

9. Denies generally and specifically each and every allegation contained in Paragraph 11 of plaintiff's request for admission, alleges the fact to be which was well known to plaintiff or it's employees or agents and particularly the offices of housing expediter that said premises were occupied by three to nine persons other than that of A. J. Lynch and his wife and that said premises during most of the period alleged was occupied by three to nine persons and not 2.

10. Denies generally and specifically each and every allegation [19] contained in specification #12 of plaintiff's request for admissions, alleges the fact to be that the sum of \$75.00 was the amount received as rent for said premises.

11. Admits the allegation contained in specification #13 of plaintiff's request for admissions.

12. Answering the specification #14 of plaintiff's request for admission and alleges the fact to

be the defendant was under no obligations to return cleaning deposit if the amount was used in cleaning the premises after the Lynches vacated.

13. Admits the allegations of specification of plaintiff's request for admission and alleges that on the 11th day of July, 1948, the maximum rent on said premises was the sum of \$95.00 per month.

14. Answering plaintiff's specification #16 of his request for admissions, this answering defendant denies generally and specifically each and every allegation therein contained, alleges the fact to be that an officer or employee of the office of housing expediter and in violation of his oath of office, wrote out in his handwriting all the letters and figures and did practice and commit duress upon the person of the defendant and in the presence of a witness, did compel the defendant under duress to sign the document, set out as Exhibit #2 and that said document by reason thereof is null and void and of no more effect than if it had been forged.

15. Answering specification #17 of plaintiff's request for admission this answering defendant denies that said document is genuine.

16. Answering plaintiff's specifications #18, 19 and 20, this answering defendant refers to statement given in answer to specification #16 and makes such statement in this answer the same as though it had herein been set out.

17. Answering specifications #21, 22, 23 and 24 of plaintiff's request for admissions and alleges that said order was [20] predicated on the registra-

tion statement, referred to its specification #16 of plaintiff's request for admissions which was alleged to have been obtained by an officer of the housing expediter under duress and therefor void and that any order based on such a document is also void and of no force or effect.

18. This answering defendant has no knowledge, information or belief sufficient to enable her to answer specification #28 of plaintiff's request for admissions and therefor basing her denial on such lack of information or belief. She denies each and every allegation contained in said specification #28.

Dated: Los Angeles, California, this 24th day of January, 1950.

/s/ DOROTHY SHARP.

Subscribed and sworn to before me this 24th day of January, 1950.

[Seal] /s/ THEODORE R. GABRIELSON,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires November 2, 1952.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 25. 1950 [21]

[Title of District Court and Cause.]

MEMORANDUM OF OPINION AND
JUDGMENT ORDER

Westover, J.:

This is an action instituted under the Emergency Price Control Act of 1942, as amended, and the Housing and Rent Act of 1947, as amended.

Defendant Dorothy Sharp was the owner of a duplex in Long Beach, California. She lived in one side of the duplex and rented the other. The rented portion was, on August 14, 1946, registered with the Rent Control Board as a rooming house of three, individual, furnished rooms. They were rented or leased to various individuals, according to the ceiling established, up to June 11, 1948, at which time the defendant made a lease with Mr. and Mrs. [23] A. J. Lynch, leasing the rented part of the duplex "as described in O. P. A. as lower room, upper room, upper middle and upper rear, including kitchen and bath" for \$75.00 per month. The ceiling on the individual rooms of the premises amounted to a total of approximately \$90.00 per month.

Sometime later the Office of Price Administration discovered that all the rooms had been leased to one tenant (Mr. and Mrs. A. J. Lynch) and demanded that the landlord file a new dwelling registration, which was filed on January 14, 1949, and which set forth that the maximum rent as of June 11, 1948 (the date of the lease) was \$75.00 per month. On March 23, 1949, the Office of the Housing Expediter made an order decreasing the rent

from \$75.00 per month to \$37.50 per month, effective June 11, 1948, which order in part provided that the excess collected should be refunded to the tenant within thirty days from the date of the order. Defendant did not make the refund, and plaintiff instituted this action to recover.

The original registration showed the premises registered were "a residence." The premises in question up to June 11, 1948, had never been rented or registered as a furnished apartment.

Section 840.7 of the rent regulations provides in part as follows:

"In any case where the Rent Area Director . . . deems it necessary or appropriate to enter an order on his own initiative he shall, before taking such action, serve a notice on the landlord of the housing accommodations [24] involved, stating the proposed action and the grounds therefor."

There is nothing in the case at bar to indicate the Area Rent Director attempted to follow the directive. The premises in question had been registered as individual, furnished rooms. It was the contention of the Area Rent Control Office that the premises were rented to the Lynches not as individual rooms, but as an apartment and, consequently, a new registration was required. No notice was served upon the defendant stating the proposed action or the grounds therefor. As far as the evidence in this case shows, the order as made on March 23, 1949, reducing the rent from \$75.00 to \$37.50

per month was made upon the initiative of the Housing Expediter, and no reasons were given the landlord for the proposed change. It is assumed that the rent was fixed in accordance with prevailing rents for like accommodations, but there is nothing in the record to indicate in any way that any attempt was made to inform the landlord of the proposed order or the reasons for it.

There is no question but the premises were controlled housing accommodations, inasmuch as the rooms in question had been registered as "rooms."

Section 825.1 provides, in part:

"Rooming house means . . . a building or portion of a building other than a hotel or motor court in which a furnished room or rooms not constituting an apartment are rented on a short-time basis of daily, weekly, or monthly occupancy to more than two paying tenants not [25] members of the landlord's immediate family."

The registration as a rooming house was, at all times mentioned in the complaint, still a valid registration and was never modified in any way. There is no doubt that the Office of the Housing Expediter could have modified the rooming house registration.

The registration made on January 14, 1949, was a new registration and not a modification of the previous one. The only question in this case is whether or not the Office of the Housing Expediter had a right to demand a new registration when the rooms in question were leased to one individual.

Section 825.7 of the Controlled Housing Regulation, issued pursuant to the Housing and Rent Act of 1947, provided that every landlord of controlled housing accommodations rented, or offered for rent, must file a registration statement with the Office of the Housing Expediter for such housing accommodations within thirty days after the first renting.

The requirement of the Rent Control Act to register was originally met by the defendant because, on August 14, 1946, she had filed a registration with the Office of the Housing Expediter and had had the ceiling established on the rooms in the house. Plaintiff now contends that Section 825.7 requires a new registration, as the single rooms were combined and rented as an apartment.

Section 203(a) of the Housing and Rent Act of 1947, as amended, provides:

“After the effective date of this Act, no maximum rents shall be established or maintained under the authority of the [26] Emergency Price Control Act of 1942, as amended, with respect to any housing.”

Plaintiff has been unable to cite any case sustaining its contention but argues that inasmuch as this is the first time the rooms were rented as an apartment, a new registration had to be filed with the Office of the Housing Expediter.

We are not convinced that this is the law under the Housing and Rent Act of 1947, as amended; as the burden of proof is on the plaintiff, we feel

the burden of proof has not been sustained as required and, consequently, that the Office of the Housing Expediter had no authority to require the registration demanded of defendant and no authority to make the order reducing the rent from \$75.00 to \$37.50.

In regard to Unit 537, rented to Lily Dolci, on which plaintiff claims an overcharge of \$1.00 from 11/5/47 to 12/5/47 and \$6.00 from 12/5/47 to 1/5/48, the receipts introduced in evidence given by the defendant Dorothy Sharp indicate that the one dollar was for rent of an additional bed, and the five dollars was cleaning charge for the apartment. There is nothing in the case to indicate that the tenant was entitled to an additional bed without paying therefor nor was entitled to the cleaning of her apartment free of charge; consequently the court is of the opinion that there is no overcharge as to Unit 537.

Judgment for defendant.

[Endorsed]: Filed March 16, 1950. [27]

[Title of District Court and Cause.]

AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above-entitled matter came on regularly to be heard on the 24th day of February, 1950, before the Honorable Harry C. Westover, Judge presiding,

in Courtroom No. 5 of the above-entitled Court, the plaintiff appearing by and through Asher Scheir, an attorney for the Office of the Housing Expediter, and the defendant, Dorothy Sharp, appearing by and through Matot, Gabrielson & Manley, by Kenneth E. Matot, her attorneys; hearing by jury having been waived by both the plaintiff and defendant, and evidence, both oral and documentary, having been introduced, and the case closed, the Court, being fully informed in the premises, now makes its Findings of Fact and Conclusions of Law as follows, to wit:

Findings of Facts

I.

It is true that at all times mentioned herein prior to July [29] 1, 1947 the housing accommodations located at 430 Daisy Avenue and 537 Melrose Way, Long Beach, California, have been subject to a maximum rent authorized and established pursuant to the Emergency Price Control Act of 1942, as amended. That at all times mentioned herein on and after July 1, 1947, said housing accommodations have been subject to a maximum rent authorized and in effect pursuant to said Housing and Rent Act of 1947, as amended; that at all times mentioned in the complaint said premises have been within the Los Angeles Defense Rental Area.

II.

It is not true that the defendant, Dorothy Sharp, received from persons for the use and occupancy of

said accommodations, rent in excess of the maximum rent established pursuant to said Act. It is true that said schedule as set out in plaintiff's complaint and made a part hereof by reference, states the rent charged to and received from said persons for such use and occupancy during said period. It is not true that said schedule states the applicable maximum rent. It is not true that said schedule states the amount of the overcharges.

III.

It is not true that the defendant charged Lily Dolci \$1.00 or any other sum or sums in excess of the maximum rent on said premises occupied by said Lily Dolci.

IV.

It is not true that the defendant overcharged A. J. Lynch the sum of \$37.50 per month from the 11th day of June, 1948, to the 10th day of July, 1948, or that there was an overcharge of \$62.50 for said time, or any other sum or sums whatsoever.

V.

It is not true that the defendant overcharged A. J. Lynch for the period from July 11, 1948, to June 11, 1949, in the sum of \$37.50 per month, or amounting to the sum of \$412.50, or any other [30] sum or sums.

VI.

It is true that all amounts charged the defendant, A. J. Lynch, for the months beginning on the 11th day of July, 1948, to the 11th day of June, 1949,

were less than the maximum ceiling established for said premises.

VII.

It is true that that portion of the premises described in plaintiff's complaint herein, namely, 430 Daisy Avenue, Long Beach, California, was duly registered with the Rent Control Board on the 14th day of August, 1946 as a rooming house, of four individual furnished rooms. It is true that the total ceiling rent on said premises under said registration was the sum of approximately \$90.00 per month.

VIII.

It is true that on or about the 11th day of June, 1948, the defendant herein entered into a written lease with the said Mr. and Mrs. A. J. Lynch, and that by virtue of the terms thereof the said defendant rented said premises as described in said lease to the said Mr. and Mrs. A. J. Lynch at \$75.00 per month for said term.

IX.

It is true that the premises in question up to June 11, 1948, had never been rented or registered as a furnished apartment.

X.

It is true that the Rent Director has never attempted to change or modify the registration of August 14, 1946.

XI.

It is true that the order by the Rent Director as

made on March 23, 1949, reducing the rent from \$75.00 to \$37.50 per month, was made on the initiative of the Housing Expediter, and that no reasons were given the landlord for the proposed [31] change, as required by law.

XII.

It is true that the registration on August 14, 1946 of said accommodations at all times mentioned in the complaint is still a valid registration and was never modified in any way.

XIII.

It is true that the registration made on January 14, 1949 was a new registration and not a modification of the previous one.

XIV

It is true that the defendants in said action originally registered said accommodations within thirty days after first originally renting the same.

XV.

That the entire housing accommodations located at 430 Daisy Avenue, Long Beach, California, consisted of the following: rear room, upper room, upper middle and upper rear, including kitchen and bath.

XVI.

That the entire unit designated as 430 Daisy Avenue, Long Beach, California, was rented to Mr. and Mrs. A. J. Lynch.

XVII.

That during the tenancy of Mr. and Mrs. A. J.

Lynch, no part of the housing accommodations located at 430 Daisy Avenue, Long Beach, California, was rented to anyone other than Mr. and Mrs. A. J. Lynch.

XVIII.

That the A. J. Lynch family consisted of Mr. A. J. Lynch, Mrs. A. J. Lynch, and one child.

XIX.

That the entire unit at 430 Daisy Avenue, Long Beach, California, was rented for the first time in its entirety on June 11, 1948, to said Mr. and Mrs. A. J. Lynch. [32]

XX.

That the Memorandum of Opinion and Judgment Order filed by this Court on the 16th day of March, 1950, is made apart of these Findings, the same as though it had herein been set out and pleaded in full.

Conclusions of Law

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

That the plaintiff, United States of America, is not entitled to judgment against the defendant, Dorothy Sharp, and that the said defendant is entitled to judgment against the plaintiff.

Let judgment be entered accordingly.

Done in open Court this 10th day of May, 1950.

/s/ HARRY C. WESTOVER,
Judge.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 10, 1950. [33]

In the United States District Court, Southern
District of California, Central Division

No. 9996-HW

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOROTHY SHARP, DOES I TO X,

Defendants.

JUDGMENT

The above-entitled matter came on regularly to be heard on the 24th day of February, 1950, before this Honorable Court, in courtroom No. 5 thereof, the Honorable Harry C. Westover, Judge presiding, a jury having been waived by both parties, and evidence both oral and documentary having been introduced, and the Court being fully informed in the premises, and the Court having filed its Findings of Fact and Conclusions of Law, being the decision of this Court.

It Is Accordingly Ordered, Adjudged and Decreed that the plaintiff, United States of America, take nothing by its complaint, and that the defendant, Dorothy Sharp, have judgment against the plaintiff.

Dated this 10th day of May, 1950.

/s/ HARRY C. WESTOVER,
Judge.

Affidavit of Service by Mail Attached.

Judgment entered May 10, 1950.

[Endorsed]: Filed May 10, 1950. [35]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is Hereby Given that United States of America, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals, for the Ninth Circuit, from the entire final judgment entered in this action on the 10th day of May, 1950.

Dated: Los Angeles, California, this 6th day of July, 1950.

ABE I. LEVY,

ASHER SCHEIR,

By /s/ ASHER SCHEIR,

Attorneys for Appellant,
United States of America.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed July 7, 1950. [37]

In the United States District Court, Southern
District of California, Central Division

No. 9996-HW

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOROTHY SHARP, DOES I TO X,

Defendants,

Honorable Harry C. Westover, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

February 25, 1950

Appearances:

For the Plaintiff:

ABE I. LEVY, ESQ., and

ASHER SCHEIR, ESQ.,

Office of The Housing Expediter.

For the Defendant, Dorothy Sharp:

MATOT, GABRIELSON & MANLEY by:

KENNETH MATOT, ESQ.

The Clerk: No. 9996-B, United States vs. Dorothy Sharp, Does I to X.

The Court: Call your first witness.

Mr. Matot: If the Court please, because of a situation involved in this case, I think it would be well if counsel made an opening statement, so the Court would know what the situation is that we have here. This is not an ordinary overcharge matter.

Mr. Scheir: Your Honor, I cannot agree with counsel.

The Court: I don't know why there is any necessity to waste time on an opening statement. I will get the facts as we go along.

Mr. Matot: I make a motion at this time, under

the provisions of Section 205 of the Housing and Rent Act of 1947, which amends Section 204 of the original Act, and ask that all testimony as to overcharge come within one year of the date of the filing of the complaint.

The Court: Well, I think that proposition has been definitely decided by this Court and other Courts. The statute does not run on overcharges; it runs on treble damages. Now, as to treble damages prior to a year, I think they are out, but not as to overcharges, not as to restitution; so your motion will be denied. [2*]

Mr. Matot: By the way, I would like to inquire if the whole record pertaining to this case is here.

Mr. Scheir: The entire official record pertaining to these premises is here, your Honor.

Mr. Hamlin.

EDWIN D. HAMLIN

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Edwin D. Hamlin.

Direct Examination

By Mr. Scheir:

Q. Mr. Hamlin, by whom are you employed?

A. The Office of the Housing—

The Court: I think counsel will probably stipulate to his qualifications. Probably counsel knows Mr. Hamlin.

(Testimony of Edwin D. Hamlin.)

Mr. Matot: Yes, no question about it. I know him well.

The Court: All right, counsel will stipulate?

Mr. Matot: Yes.

The Court: Is there any argument about the maximum rent?

Mr. Matot: Yes, there is a very serious argument.

Q. (By Mr. Scheir): Mr. Hamlin, you have the official records here, the records pertaining to 537 Melrose Way,— A. Yes, I do. [3]

Q. —Long Beach, California? A. Yes.

Q. Mr. Hamlin, I show you what purports to be an Order Determining Maximum Rent, affecting the housing accommodations at 537 Melrose Way, Long Beach, California, and ask you if that is part of the official records of the Office of the Housing Expediter? A. Yes, it is.

Mr. Scheir: Your Honor, I offer this Order Determining Maximum Rent for the accommodations located at 537 Melrose Way, which Order was dated August 22, 1944, in evidence as Plaintiff's Exhibit No. 1, and ask leave to withdraw the original and substitute therefor a certified copy.

Mr. Matot: I am going to object to the introduction of that document, upon the ground and for the reason that that Order was modified by Order of—

The Court: Mr. Matot, you may introduce all the modifications you want to. This is the original order. It is my policy in these rent cases to be

(Testimony of Edwin D. Hamlin.)

very liberal relative to the introduction of evidence, and overrule practically all objections. I try to get all the facts before the Court.

Mr. Matot: But the trouble is that was on another part of the same building, at the time that order was made. For that reason I object to it on the ground it doesn't involve [4] these accommodations, but involves other accommodations.

The Court: Overruled.

(The document referred to was marked "U. S. Exhibit No. 1," and was received in evidence.)

U. S. A. EXHIBIT No. 1

OPA

Form D-41

Stamp of Issuing Office.

Office of Price Administration

Rent Division

233 East Broadway

Long Beach 2, California

United States of America

Office of Price Administration

ORDER DETERMINING MAXIMUM RENT

Concerning (Description of Accommodations) 537
Melrose Way, Long Beach, California.

Docket No. 25089-A.

(Testimony of Edwin D. Hamlin.)

To (Name and Address of Landlord):

Mrs. Dorothy Sharp,
430 Daisy Avenue,
Long Beach, California.

(Copy)

The Rent Director has duly considered the above matter and:

☐ Finds that the rent on the Maximum Rent Date was \$. per which amount is the Maximum Rent for the above-described accommodations.

☒ The Maximum Rent for the above-described accommodations is hereby fixed at \$25.00 per month the rent which the Rent Director finds was the rent generally prevailing in this Defense-Rental Area for comparable housing accommodations on the maximum Rent Date (Furnished).

Without electric services, but including gas and heat for cooking, and water.

Issued August 22, 1944.

/s/ DAVID BARRY, JR.,

Rent Director.

Copy to (Name and Address of Tenant): Tenant-Occupant, 537 Melrose Way, Long Beach, California.

I certify this is a true and correct copy of the order issued under Docket No. 25089-A issued by the Long Beach area office of the Office of the Housing Expediter.

/s/ ALICE WEAVER,

Dkt. Clerk.

[Endorsed]: Filed August 4, 1950.

(Testimony of Edwin D. Hamlin.)

Q. (By Mr. Scheir): Mr. Hamlin, I show you an Order Adjusting Maximum Rent, issued March 13, 1947, affecting housing accommodations at 537 Melrose Way, Long Beach, California, and ask you if that is part of the official records of the Office of the Housing Expediter.

A. Yes, it is.

Mr. Matot: And the same objection to this.

The Court: Same objection, and same ruling.

Mr. Scheir: I offer this in evidence, your Honor, as Plaintiff's Exhibit No. 2, and ask leave to withdraw the original and substitute therefor a photostatic copy.

The Court: It may be admitted.

(The document referred to was marked "U. S. Exhibit No. 2," and was received in evidence.)

U. S. EXHIBIT No. 2

United States of America

Office of Temporary Controls

Office of Price Administration

Office of Temporary Controls, Office of Price Administration, Rent Division, Long Beach Defense Rental Area, 110 East Anaheim, Long Beach, California.

Concerning (address of accommodations): 537 Melrose Way, Long Beach, California.

Docket No. 92450 RJA:k.

(Testimony of Edwin D. Hamlin.)

To (Name and Address of Landlord): Mrs. Dorothy Sharp, 428 Daisy Avenue, Long Beach, California.

To (Name and Address of Tenant): Tenant-Occupant, 537 Melrose Way, Long Beach, California.

The Rent Director, after consideration of all the evidence in this matter, has determined that the Maximum Rent for the above-described accommodations should be adjusted on the grounds stated in Section(s) 5(a)(3) of the Rent Regulation.

For added dishes, silver and cooking utensils and services of all electricity.

Therefore, it is ordered that the Maximum Rent for the above-described housing accommodations be, and it hereby is, changed from \$25.00 per month to \$29.00 per month.

Issued March 13, 1947, and effective March 13, 1947. This order is now in effect and will remain in effect until changed by the Office of Price Administration. Consideration given but no adjustment allowed on other grounds given by landlord in petition.

/s/ B. C. KOEPKE,

Area Rent Director for Los Angeles Defense Rental Area.

Admitted Feb. 24, 1950.

(Testimony of Edwin D. Hamlin.)

Q. (By Mr. Scheir): Mr. Hamlin, do you have the official records of the Office of the Housing Expediter pertaining to the accommodations located at 430 Daisy Avenue, Long Beach?

A. Yes, I do.

Q. Mr. Hamlin, I show you what purports to be a registration statement affecting the accommodations at 430 Daisy Avenue, Long Beach, California, received January 14, [5] 1949, and ask if that is part of the official records of the Office of the Housing Expediter.

A. Yes.

Mr. Matot: Now, your Honor, we are going to object to that on the ground that the government filed a Request for Admission, and Rule 36 requires us to answer, and that becomes a part of the pleadings before this Court. Now, in that pleading we allege and set out that this document was secured under duress, and we will prove that by direct proof.

The Court: Overruled. You will have a chance to prove that when your time comes.

Mr. Scheir: If the Court please, I offer in evidence the statement affecting the housing accommodation 430 Daisy Avenue, bearing "Received" stamp of January 14, 1949, and ask leave to withdraw the original and substitute therefor a certified copy.

The Court: It may be received.

Mr. Matot: We object to it, your Honor.

The Court: Same ruling.

Mr. Scheir: Your Honor, inasmuch as the validity of the Registration statement seems to be in

(Testimony of Edwin D. Hamlin.)

issue, may I withdraw the original at the conclusion of the trial?

The Court: You may.

The Clerk: No. 3.

(The document referred to was marked "U. S. Exhibit No. 3," and was received in evidence.) [6]

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#3

GENERAL INSTRUCTIONS

The landlord is required to register separately each rental dwelling unit, whether occupied or vacant. A dwelling unit is a room or a group of rooms for which a single rent is paid. Complete a Registration Statement in triplicate. (If not typewritten, be sure correct procedure is used so that both carbon copies are clear and distinct.)

move carbons, and mail or bring the three copies to the Area Rent Office.

extra sheets, in triplicate, for sections "D" and "E" if necessary.

Maximum
rent
date

Effective
Date

SECTION A. MAILING ADDRESS OF LANDLORD

Name of Landlord Dorothy Sharp

Name of Agent

Address Mail to: ↓

Dorothy Sharp

425 Dairy

City and State Long Beach, Calif.

UNITED STATES OF AMERICA
OFFICE OF PRICE ADMINISTRATION
REGISTRATION OF RENTAL DWELLINGS
(TYPE OR PRINT PLAINLY-DO NOT FOLD)
(Do Not Use This Form for Hotels and Rooming Houses)

Form Approved Housing
Bureau No. 06-1077-1
Form DD-U

AREA OFFICE
COPY

IDENTIFICATION

1. 430 Dairy Ave
Address of the rental dwelling unit
2. _____
Apartment number or location
3. Number of Rooms in unit being registered 5
4. Total Number of dwelling units in this structure 2

SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant A. J. Lynch

Address 430 Dairy Ave

City and State Long Beach, Calif.

SECTION C. MAXIMUM RENT

Read carefully and fill in every item which applies to this dwelling unit.

Rent on "Maximum Rent date" \$ _____ per week () per month ()

Not rented on "Maximum Rent date" but rented at any time during the two-month period ending on "Maximum Rent date."

Date last rented during that two-month period: _____, 194

Rent on that date: \$ _____ per week () per month ()

Not rented on "Maximum Rent date" nor at any time during the two-month period ending on "Maximum Rent date," but rented after "Maximum Rent date."

Check one box if applicable:

- ☐ (a) Owner occupied or vacant on "Maximum Rent date" and during two-month period ending on "Maximum Rent date."
- ☐ (b) Newly constructed without priority rating.
- ☐ (c) Newly constructed with priority rating. (If checked, item 6 must also be filled in.)

Date first rented after "Maximum Rent date." _____, 194

Rent on that date: \$ 75.00 per week () per month ()

Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after "Maximum Rent date."

Date first rented after such change: _____, 194

Rent on that date: \$ _____ per week () per month ()

Substantially changed after "Maximum Rent date," but before the "effective date." Check one box if applicable:

- ☐ (a) From unfurnished to fully furnished.
- ☐ (b) From fully furnished to unfurnished.
- ☐ (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.

Date first rented after such change: _____, 194

Rent on that date: \$ _____ per week () per month ()

Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.

Rent approved by agency granting priority: \$ _____ per week () per month ()

THE MAXIMUM RENT FOR THIS DWELLING UNIT IS:

Enter Maximum Rent in accordance with the following instructions: \$ 75.00 per week () per month ()

- (a) If only one of the above items applies to this dwelling unit the Maximum Rent is the rent reported for that item.
- (b) If more than one of the above items apply to this dwelling unit the Maximum Rent is the rent reported for the most recent date, except in the case of item 6.
- (c) If item 6 applies to this dwelling unit the Maximum Rent is the lower of the rents entered in 1, 2, or 3.

Note: If any one of the items 3(b), 4 or 5 applies to this dwelling unit you must also fill in the information required in Section D. The Rent Director may at any time order a decrease in the Maximum Rent determined under Items 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

Order issued by Rent Director dated _____ established maximum rent of _____ per week () per month ()

Section E. - See Note Section C. 7

If item 3(b), 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:

- (a) New construction (c) A change from unfurnished to fully furnished
- (b) A change in the number of dwelling units (d) A major capital improvement

This unit formerly rented as room

SECTION D. EQUIPMENT AND SERVICES.

(Check the equipment and services included in the rent on "Maximum Rent date" or the most recent date you entered in Section C.) (ANSWER "YES" or "NO")

1. EQUIPMENT

	YES	NO
Furniture	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Running Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hot Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Flush Toilet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bathroom	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Central Heating	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heating Stove	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mech. Refrigerator	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Electricity Installed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooking Stove	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If any equipment is shared, explain below:

2. SERVICES

	YES	NO
Garage	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heat or Heating Fuel	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cooking Fuel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cold Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hot Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Light	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ice or Refrigeration	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Janitor Service	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Garbage Disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Painting & Decorating	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interior Repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exterior Repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>

List any other services: Heat paid by LL + T

Are all equipment and services indicated above now included in the rent? Yes () No ()

If "No" you must also file Form D-2

WARNING

The rent for this dwelling unit on and after the "effective date" can be no more than the Maximum Rent entered in Section C, Item 8, unless changed by order of the Rent Director (see Section C, Item 8).

A false statement on this form or an evasion or attempted evasion of the Maximum Rent Regulation may subject you to a \$5,000 fine or imprisonment for one year.

I HEREBY REPRESENT that all statements and entries given herein are true and correct.

(Signature of Landlord or his Agent) 1/18/49 (Date)

(Testimony of Edwin D. Hamlin.)

Q. (By Mr. Scheir): Mr. Hamlin, I show you what purports to be an Order Decreasing Maximum Rent Requiring Refund to Tenant, affecting housing accommodation 430 Daisy Avenue, Long Beach, California, which order was issued March 23, 1949, and ask if that is part of the official records of the Office of the Housing Expediter.

A. Yes, it is.

Mr. Matot: Now, we object to this document on two grounds: On the first ground, that there is another order which antedates this order and therefore this order may not be introduced until the Government offers the prior order showing that this order modifies the prior order; and upon the further ground that this order was obtained under duress.

The Court: Overruled.

Mr. Scheir: If the Court please, I offer in evidence the Order Decreasing Maximum Rent Requiring Refund to Tenant affecting housing accommodation 430 Daisy Avenue, Long Beach, which order was issued March 23, 1949, as Plaintiff's Exhibit No. 4, and ask leave to withdraw the original and substitute therefor a photostatic copy.

The Court: It may be admitted.

(The document referred to was marked "U. S. Exhibit No. 4," and was received in evidence).

(Testimony of Edwin D. Hamlin.)

U. S. EXHIBIT No. 4

United States of America
Office of The Housing Expediter
Office of Rent Control

ORDER DECREASING MAXIMUM RENT
REQUIRING REFUND TO TENANT

Stamp of Issuing Office: Office of Housing Expediter, 110 East Anaheim, Long Beach 13, California.

Docket No. 99837-RJA-b

Concerning (Address of Accommodations), 430 Daisy Ave., Long Beach, California.

To (Name and address of landlord):

Dorothy Sharp,
428 Daisy Ave.,
Long Beach, Calif.

The Rent Director, after consideration of all the evidence in this matter, has determined that the maximum rent for the above-described housing accommodations should be decreased on the grounds stated in Section 5C1 of the Rent Regulation, and further for the reason stated in Section(s) 5C1 of the Rent Regulation, and further for the reason(s) stated in Section(s) 5C1 of the rent regulation, the maximum rent so decreased and determined by this Order shall be effective from 6/11/48.

Therefore, it is ordered that the maximum rent for the above-described accommodations be, and it

(Testimony of Edwin D. Hamlin.)

hereby is, decreased from \$75.00 per month to \$37.50 per month, effective from 6/11/48. No rent in excess of \$37.50 month (maximum rent established by this Order) may be received or demanded.

Any rent collected from the effective date of this Order in excess of the amount provided in this Order shall be refunded to the tenant within 30 days from the date this Order is issued unless the refund is stayed in accordance with the provisions of Rent Procedural Regulation No. 1.

This Order is now in effect and will remain in effect until changed by the Office of the Housing Expediter. Landlord's Letter dated 3/9/49 has been considered.

Issued: March 23, 1949.

/s/ B. C. KOEPKE,

Area Rent Director for Los Angeles Defense Rental Area.

Notice to Landlord and Tenant: Read the reverse side

To (Name and address of tenant):

Tenant Occupant,
430 Daisy Ave.,
Long Beach, California.

cc: Compliance.

Admitted: February 24, 1950.

(Testimony of Edwin D. Hamlin.)

Q. By Mr. Scheir: Mr. Hamlin, are there any other orders or documents in the official records affecting the [7] maximum rent for the unit as an entirety at 430 Daisy Avenue, Long Beach, California? A. No, there are not.

Mr. Scheir: I have no further questions.

Cross-Examination

By Mr. Matot:

Q. Mr. Hamlin, have you in your file the order fixing maximum rent on the 20th day of August, 1948?

A. Yes. That applies to rooms within that——

Q. Very well; that is all I asked you. Have you that order? A. Yes.

Q. Have you also the order of June 29, 1948?

A. Yes, I have. That also applies to rooms.

Mr. Matot: I ask leave now to introduce these two orders, your Honor.

The Court: If you will get the orders from Mr. Hamlin——

Q. (By Mr. Matot): Will you give me those orders, please?

A. Have you got copies?

Q. I have got copies.

A. All right; these are the originals. The ones you have appear to be the originals. They must have been issued in duplicate.

Mr. Matot: Well, let me show them to counsel.

Mr. Scheir: Very well, your Honor, I will

(Testimony of Edwin D. Hamlin.)

stipulate [8] these are copies of the originals.

Mr. Matot: May I offer these and ask that they be marked Defendant's Exhibit A?

The Court: They may be admitted.

(The documents referred to were marked, collectively, Defendant's Exhibit A, and received in evidence).

Q. (By Mr. Matot): Now, Mr. Hamlin, will you refer to your records and tell me if this last order—pardon me. Will you tell me if you have in your file any order modifying these two orders, one of 8/20/48 and one of June 29, 1949?

A. As applicable to rooms——

Q. Will you answer my question. Have you any orders modifying those orders?

A. Not as to rooms within——

Mr. Matot: Your Honor, I ask that this witness be instructed to answer the question.

The Court: The answer is "No," Mr. Matot, he hasn't any orders.

Mr. Matot: Very well. I think that is all with this witness.

Redirect Examination

By Mr Scheir:

Q. Mr. Hamlin, I call your attention to the Registration statement, now in evidence, marked Plaintiff's Exhibit No. 3, and ask you whether that applies to the housing accommodations [9] at 430 Daisy Avenue in their entirety, or whether it applies to individual rooms.

(Testimony of Edwin D. Hamlin.)

Mr. Scheir: I object to that on the ground it is argumentative. The record speaks for itself, your Honor.

The Court: Sustained.

Mr. Scheir: Very well, your Honor. I have no further questions.

(Witness excused.)

Mr. Scheir: I call Mrs. Lynch.

LAVONNE LYNCH

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Lavonne Lynch.

The Clerk: Take the stand.

Direct Examination

By Mr. Scheir:

Q. Mrs. Lynch, have you ever lived at 430 Daisy Avenue, Long Beach, California?

A. Yes, sir.

Q. During what period of time did you live there?

A. I lived there from June 15th—16th—June 16th to April 30th.

Q. And will you give us the years, please?

A. The year started—of 1948, I am sorry, to 1949. [10]

Q. And you moved out when?

A. April 30th.

(Testimony of Lavonne Lynch).

Q. Of 1949? A. Of 1949.

Q. Mrs. Lynch, will you please tell the Court how you learned about the house accommodations at 430 Daisy Avenue?

Mr. Matot: Now, I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Court: How is this material?

Mr. Scheir: It is material, your Honor, inasmuch as the defense seems to be that the Registration statement and the order pertaining to rooms in the structure should apply, whereas the Plaintiff contends the maximum rent for the entire unit should apply.

The Court: Isn't that for the Court to decide?

Mr. Matot: I think——

The Court: Just a minute, Mr. Matot.

Mr. Scheir: It is very material to determine what the rental arrangement was when the tenant rented from the landlord.

The Court: Well, your question is, How did she learn? What does that have to do with it?

Mr. Scheir: Well, it appears, your Honor, that the rental of this unit was advertised in a newspaper——

Mr. Matot: I object to that very [11] strenuously.

The Court: Overruled. She may answer.

Mr. Scheir: Will you answer the question?

The Witness: We found the ad in a newspaper, a Long Beach newspaper, The Independent.

(Testimony of Lavonne Lynch).

Q. By Mr. Scheir: Do you recall the date?

A. June 11, 1948.

Q. Mrs. Lynch, I show you what appears to be a photostatic copy of The Independent dated June 11, 1948, and ask if the ad that you saw appears on that photostatic copy.

Mr. Matot: Now, your Honor, I object to that on the ground there is no foundation laid.

The Court: Overruled. She is just asked to look.

The Witness: The ad is present on this paper.

Mr. Scheir: The ad is present on the paper.

Your Honor, at this time I would like to call the representative from the newspaper, inasmuch as she is particularly anxious to get away, and I think this might be an appropriate point to lay the foundation and introduce the copy of the newspaper.

The Court: Any objection?

Mr. Matot: Yes, I object to it as incompetent, irrelevant and immaterial.

The Court: Overruled. You may call her.

Mr. Scheir: Step down, please.

(Witness temporarily excused). [12]

Mr. Scheir: Mrs. Smith.

LOIS G. SMITH

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, **was examined** and testified as follows:

The Clerk: Your name, please?

The Witness: Lois G. Smith.

(Testimony of Lois G. Smith).

The Clerk: Take the stand, please.

Direct Examination

By Mr. Scheir:

Q. Mrs. Smith, by whom are you employed?

A. Long Beach Independent.

Q. In what capacity?

A. Classified advertising manager.

Q. In your capacity as the advertising manager, do you have access to the official records of that organization? A. Of all records, yes.

Q. Do you have with you today the official newspaper published on June 11, 1948, of The Independent of Long Beach?

A. I do, in the permanent bound form.

Q. Will you turn to that newspaper, please.

(Witness complies with request.)

Q. Mrs. Smith, I show you a photostatic copy of what purports to be a page of the June 11, 1948, issue of The Independent, and ask you if that is a photostatic copy—— A. It is. [13]

Q. ——of page 43 appearing in the newspaper of that date? A. It is.

Q. I call your attention to an ad enclosed in red, appearing on column number 5 of page 43, and ask you if the ad enclosed in red on the photostatic copy appears in the original of your newspaper of that date? A. It does.

Mr. Scheir: Mr. Matot, would you like to see the original of this newspaper?

(Counsel examines document.)

(Testimony of Lois G. Smith).

Mr. Scheir: If the Court please, I would like to introduce a photostatic copy of the original, a photostatic copy bearing the certification of the proper officer of The Independent.

The Court: Any objection?

Mr. Matot: No, I won't object to that.

The Court: It may be received.

The Clerk: No. 5.

(The document referred to was marked "U. S. Exhibit No. 5," and was received in evidence).

Mr. Scheir: I have no further questions.

The Court: Do you want to ask the witness any questions?

Mr. Matot: No, your Honor.

The Court: You may be excused.

(Witness excused.) [14]

Mr. Scheir: If the Court please, I would like to recall Mrs. Lynch now.

LAVONNE LYNCH

resumed the stand as a witness called by and on behalf of the Plaintiff and, having been previously duly sworn, testified further as follows:

Direct Examination

(Continued)

By Mr. Scheir:

Q. Mrs. Lynch, I show you photostatic copy of page 43 of the Long Beach Independent dated June

(Testimony of Lavonne Lynch).

11, 1948, which is now in evidence as Plaintiff's Exhibit No. 5, and ask if the ad that you saw pertaining to the accommodations at 430 Daisy Avenue appears in that photostatic copy?

A. It does appear here.

Q. Would you please read that portion which pertains to the subject premises?

A. "\$75—2 bedroom duplex, close in; Westside. Adults. Lease 1 year. Phone 64-1123."

Q. And that phone number you just read, whose phone number is that?

A. It is Dorothy Sharp's.

Mr. Matot: I move to strike that out as hearsay.

The Court: Overruled.

Q. By Mr. Scheir: Mrs. Lynch, after you read that ad, what did you do? [15]

A. We called that number on the telephone.

Q. And whom did you speak to?

A. We spoke to Mrs. Sharp's daughter, and then we asked if Mrs. Sharp was there—or asked if the lady who was advertising was there, and she said, "No, but she will return in a few moments," and she gave us the address. And we went over, and by that time Mrs. Sharp had returned.

Q. When you say "we," who do you mean?

A. My husband and myself.

Q. Where was Mrs. Sharp living at the time or after you read the ad? A. 428 Daisy.

Q. Where is 428 Daisy with relation to 430?

(Testimony of Lavonne Lynch).

A. Part of the same duplex, the other side. Part of the same building.

Q. When you visited 428 Daisy Avenue, did you speak to Mrs. Sharp? A. Yes.

Q. Will you please tell the Court what was said at that time.

A. We asked Mrs. Sharp if the place was yet rented. She said, "No," so we asked if we might see it.

She took us over and showed us the accommodations, and we went over it with her and decided it would be all right, but she could not make up her mind whether or not she wanted [16] to rent it.

Mr. Matot: I object to that "couldn't make up her mind," and move it be stricken.

The Court: It may go out.

Q. (By Mr. Scheir): Did she rent the place to you at that time? A. No.

Q. Did you see Mrs. Sharp again or speak to her again? A. We saw her next day.

Q. What happened at that time?

A. She still had not determined whether to rent it to us.

Q. Did you see her after that?

A. Yes, the following day.

Q. What happened at that time?

A. She came over to the motel where we were staying to make inquiry whether or not we would object to her daughter's piano practicing for an hour in the afternoon; and we still didn't know whether we had the place.

(Testimony of Lavonne Lynch).

Q. Mrs. Lynch, did you rent the place at that time? A. No.

Q. Tell us about the next time you saw or talked to Mrs. Sharp?

A. We went over to see her the next day, and she decided to rent the place to us.

Mr. Matot: I move to strike what she decided to do. [17]

The Court: It may go out.

Q. (By Mr. Scheir): What did she say about renting the place?

A. She said she had decided to rent it to us.

Q. Did she rent it to you at that time?

A. Orally. We did not have leases until the following day.

Q. Mrs. Lynch, I show you what purports to be a lease dated June 11, 1948, for premises known as 430 Daisy Avenue, Long Beach, California, and ask you if that is the lease which you signed at that time. A. It is.

Mr. Scheir: If the Court please, I offer this lease dated June 11, 1948, in evidence as Plaintiff's Exhibit No. 6.

The Court: It may be received.

(The document referred to was marked "U. S. Exhibit No. 6" and was received in evidence.)

(Testimony of Lavonne Lynch).

U. S. A. EXHIBIT No. 6

Lease

General

This Indenture, Made the Eleventh day of June, 1948, between Dorothy Sharp and Mr. and Mrs. A. J. Lynch. Lessee (whether one or more).

Witnesseth: That the said Lessor has leased, and by these presents does grant, demise and lease unto the said Lessee, and the said Lessee has hired and taken, and by these presents does hire and take of and from the said Lessor,

Premises known as 430 Daisy Ave., Long Beach, Calif. and described in O. P. A. as Lower room—Upper front—Upper middle—Upper rear. Including kitchen and bath. For use of immediate family only under the agreement of this lease.

To include furniture and furnishings as stated in rental agreement inventory.

with the appurtenances, for the term of One Year, commencing on the Eleventh day of June, 1948, and ending on the Eleventh day of June, 1949, at the total rent or sum of Nine Hundred Dollars, payable \$75.00 in advance on the Eleventh day of each and every calendar month.

Received Two hundred and twenty-five Dollars. First month and last two months to be paid in advance.

Paid June, 1948, and April and May, 1949.

Lessee agrees to pay the gas and electric bills as

(Testimony of Lavonne Lynch).

part of agreement for rent under ceiling.

Hot water to be furnished by lessor for the first six months of lease unless lessor moves. After this period to be paid for by ten tenants, unless otherwise agreed, at rate of \$1.00 per month.

It is further understood that no linens are furnished.

Lessee agrees to give possession of all rooms at end of lease unless otherwise agreed in writing.

And the said Lessee hereby covenants to pay the said Lessor the said rent, herein reserved in the manner herein specified. And not to make or suffer any alteration to be made therein without the written consent of the Lessor.

And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the Lessor to re-enter the said premises and to remove all persons therefrom.

And That at the expiration of the said term or any sooner determination of this lease, the said Lessee will quit and surrender the premises hereby demised, in as good order and condition as reasonable use and wear thereof will permit, damages by the elements excepted. And if the Lessee shall hold over the said term with the consent expressed or implied, of the Lessor, such holding shall be construed to be a tenancy only from month to month.

The lessee acknowledges the house and furniture

(Testimony of Lavonne Lynch).

are in good condition and clean and agrees to leave it the same, and to pay for any damage to property or furnishings.

In Witness Whereof, the said parties have hereunto set their hands and seals the day and year first above written.

/s/ MRS. DOROTHY SHARP,

/s/ A. J. LYNCH,

/s/ MRS. A. J. LYNCH.

Received September 9, 1948.

Admitted February 24, 1950.

Q. (By Mr. Scheir): Now, Mrs. Lynch, at the time you rented accommodations at 430 Daisy Avenue, Long Beach, what did your family consist of?

A. My daughter, my husband and myself.

Q. How old is your daughter?

A. She is now sixteen.

Q. Did you rent these accommodations furnished or unfurnished? [18]

A. Furnished.

Mr. Matot: I move to strike it. The lease speaks for itself.

The Court: Sustained.

Q. (By Mr. Scheir): Mrs. Lynch, will you please describe the furnishings in each room in this accommodation?

(Testimony of Lavonne Lynch).

Mr. Matot: I object to that question on the ground it is incompetent, irrelevant and immaterial and has no bearing on the issues before this honorable Court.

The Court: Sustained.

Mr. Scheir: If the Court please, may I be heard on that? It appears the defendant is contending this place was rented as rooms.

The Court: Aren't you anticipating the defense? Suppose you wait until the defense goes in.

Mr. Scheir: I was trying to speed it up. Very well.

Q. (By Mr. Scheir): Mrs. Lynch, when you rented the accommodations at 430 Daisy Avenue from Mrs. Sharp, what was the arrangement as to payment of the rent?

Mr. Matot: We object to that on the ground the lease speaks for itself.

The Court: Sustained.

Mr. Matot: It is all in the lease.

The Court: Sustained.

Mr. Scheir: May I see the lease again, please?

The Court: Of course, if there is a contention she didn't pay the rent——

Mr. Scheir: No, there isn't, your Honor.

The Court: That isn't the argument, is it? She

(Testimony of Lavonne Lynch).

signed the lease, the lease is the contract, and you either stand or fall on the lease. I assume all the payments were made, at least, you are bringing an action to recover on the theory the payments were made.

Mr. Scheir: If counsel will stipulate that in addition to the rent there was a cleaning charge of \$25.00, I will not pursue the matter further.

Mr. Matot: I will stipulate to nothing whatever.

Mr. Scheir: Very well.

Q. Mrs. Lynch, how did you pay the rent?

Mr. Matot: Now, I object to that on the ground it is incompetent, irrelevant and immaterial. The lease is the best evidence, your Honor.

The Court: Overruled.

The Witness: We paid the first month and the last two months of the lease in one check, plus a twenty-five dollar cleaning deposit.

Q. (By Mr. Scheir): And how did you pay the rent for the succeeding months?

A. \$75.00——

Mr. Matot: I object to that as incompetent, [20] irrelevant and immaterial.

The Court: Overruled.

Mr. Scheir: If your Honor please, I am trying to establish my case.

The Court: Overruled.

Mr. Scheir: Will you answer?

The Witness: We paid each month on the 11th of the month.

Q. (By Mr. Scheir): By a check or cash?

(Testimony of Lavonne Lynch).

A. By check.

Q. How much did you pay each month after the first month?

A. We paid \$75.00 for the—I have to count on my fingers—for the first six months, and the following five we paid \$76.00, because she asked a dollar extra for the gas and water heater the last six months.

Q. Now, Mrs. Lynch, I show you a series of checks, ten in number, and ask you if these are the checks which you gave to **Mrs. Sharp in payment** of the rent and the cleaning fee?

Mr. Matot: Wait a minute. I object to the question. It assumes something not in evidence. It says "rent and cleaning." I object to the question.

Mr. Scheir: Your Honor, the witness testified she paid a cleaning fee of \$25.00.

The Court: Overruled.

The Witness: They are. [21]

Mr. Scheir: If the Court please, I offer these ten checks in evidence as Plaintiff's exhibit next in order.

The Court: They may be received.

The Clerk: No. 7.

(The documents referred to were marked "U. S. Exhibit No. 7," and were received in evidence.)

Mr. Scheir: I have no further questions of this witness, your Honor.

(Testimony of Lavonne Lynch).

Cross-Examination

By Mr. Matot:

Q. Now, Mrs. Lynch, did you ever live in this apartment prior to the 11th day of June of 1948?

A. I did not.

Q. Now, at the time you and your husband signed this lease, did you read it carefully before you signed it?

A. We did.

Q. You know everything that was contained within that lease?

A. I believe so.

Q. Now, during the first month, from the 11th day of June, 1948, to the 11th day of July, 1948, how many persons did you have living with you in that accommodation?

A. There were three persons living in that accommodation.

Q. Isn't it a fact that you had some six persons living there with you for one month, other than the three persons in [22] your immediate family?

A. That is not true.

Q. They were never there at any time?

A. They did not live there.

Q. Well, what do you mean they didn't live there?

A. We had guests for a couple of nights, but they did not live there.

Q. How many nights?

A. We had a family of guests for two nights, one night with the permission of the landlady, and——

Q. I am discussing now about June 11th to July 11th.

(Testimony of Lavonne Lynch).

A. We did not have any guests during that time——

Q. No guests? A. ——that I recall.

Q. Very well. When was the last month you paid rent under this lease?

A. From May 11th to June 11th, 1949.

Mr. Matot: O. K., that is all.

Mr. Scheir: No further questions, Your Honor.

(Witness excused.)

The Court: Call your next witness.

Mr. Scheir: Mrs. Gutierrez. [23]

LILLY GUTIERREZ

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please.

The Witness: Lilly Gutierrez.

The Clerk: Please be seated.

Direct Examination

By Mr. Scheir:

Q. Mrs. Gutierrez, you were formerly Lilly Dolci, is that correct? A. Yes.

Q. Have you ever lived at 537 Melrose Way in Long Beach, California? A. Yes, sir.

Q. During what period of time did you live there?

A. I paid rent from November 5, 1947,——

Mr. Matot: I move to strike it on the ground it is not responsive.

(Testimony of Lilly Gutierrez.)

The Court: Denied.

The Witness: —and I lived there until October of nineteen-forty—well, I was married and I moved out I think in '48.

Q. (By Mr. Scheir): During the time you lived there, to whom did you pay your rent?

A. Mrs. Dorothy Sharp. [24]

Q. And how much did you pay?

A. I paid \$30.00 for the first two months, and twenty-nine thereafter.

Q. In addition to the thirty-dollar payment, were there any additional charges?

A. \$5.00, cleaning charge.

Q. Were these premises rented to you furnished or unfurnished? A. Furnished.

Q. Now, Mrs. Gutierrez, I show you two receipts, one dated November 5, 1947, the other December 5, 1947, and ask you from whom you obtained those receipts?

A. I obtained the first one from Mrs. Sharp—both of them from Mrs. Sharp; but the one that has "Cleaning charges paid," she had given me that receipt later, but I had actually paid her mother and she gave me written receipt for the rent and that charge after that.

Q. Do these two receipts represent the rent for the month of November and the rent for the month of December and the cleaning charge?

A. Yes, sir.

Mr. Scheir: If the Court please, I offer these two receipts as Plaintiff's exhibits next in order.

(Testimony of Lilly Gutierrez.)

The Clerk: No. 8.

The Court: They may be received. [25]

(The documents referred to were marked
"U. S. Exhibit No. 8," and were received in
evidence.)

Mr. Scheir: I have no further questions, your
Honor.

The Witness: May I say something?

The Court: No; I am sorry.

The Witness: I have plenty to say.

Cross-Examination

By Mr. Matot:

Q. Now, when you moved in there, Mrs. Gutierrez, you saw another bed that you wanted, didn't you, in that house? A. No, I did not.

Q. And isn't it a fact that Mrs. Sharp charged you a dollar for giving you a different bed?

A. That is not true. I didn't see the bed until I actually moved into the house and paid the rent.

Q. You didn't ask her to move a bed in extra for you? A. No.

Q. And you did not pay \$1.00 extra for this bed?

A. She had what you might call a Hollywood studio couch, and said it was a new couch, and asked me if I would be willing to pay a dollar extra for that until it was paid for. I said I would do that, because I wanted a place to stay.

Q. So you actually paid this dollar to get that other bed? A. Yes. [26]

Mr. Matot: That is what I wanted.

(Testimony of Lilly Gutierrez.)

Redirect Examination

By Mr. Scheir:

Q. Mrs. Gutierrez, did you rent these accommodations furnished or unfurnished?

A. Furnished.

Q. Was there another bed in there at the time, other than this Hollywood bed?

A. There was not.

Mr. Scheir: I have no further questions.

Mr. Matot: Nothing further, your Honor.

The Court: You may step down.

The Witness: I can't say anything?

The Court: No.

(Witness excused.)

The Court: How many witnesses do you have, Mr. Scheir?

Mr. Scheir: That is my case.

The Court: How many witnesses do you have, Mr. Matot?

Mr. Matot: About three.

The Court: It is twelve o'clock. We will recess until two o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m., of the same day.) [27]

Friday, February 25, 1950

Mr. Matot: If your Honor please, the plaintiff having rested, it is now our intention to argue a motion for non-suit.

The Court: Mr. Matot, I am not interested in any argument you may make at this time. I want all the evidence before the Court. You are wasting the Court's time by making an argument at this time.

Mr. Matot: Very well. I merely want to protect the record.

The Court: The record may show you offered to make an argument and I have discouraged it.

Mr. Matot: Very well.

Mrs. Sharp, will you take the witness stand.

DOROTHY SHARP

a defendant herein, called as a witness in her own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name is——

The Witness: Dorothy Sharp.

The Clerk: Take the stand.

Direct Examination

By Mr. Matot:

Q. Mrs. Sharp, will you state your full name?

A. Mrs. Dorothy Sharp. [28]

Q. Where do you reside?

A. 428 Daisy Avenue, Long Beach.

Q. And are you the defendant in this action?

A. Yes.

Q. And you are the owner of the property described in this complaint? A. Yes.

Mr. Matot: May I have Exhibit No. 5, I believe, the newspaper.

Q. Now, Mrs. Sharp, I will show you at this time Plaintiff's Exhibit No. 5, which is a copy of the

(Testimony of Dorothy Sharp.)

classified ad section of the Long Beach Independent, and call your attention particularly to the ad marked here in red. A. Yes.

Q. Now, did you put that ad in the paper, Mrs. Sharp?

A. Yes. May I look at it just a moment to see if I see something else on here?

Q. Yes.

A. Pardon me a moment; I have to run down these quickly. There is also another ad in here I placed the same day, running in the paper the same day.

I find one here——

Q. Will you read the other ad you put in on the same day?

A. Yes. I advertised rooms. In this case I took one specific room and advertised it. Then, of course, I talked [29] to the people, naturally, regarding it, and if they didn't want it I had two others, or one other, and instead of advertising them both I just put one ad in.

Q. What did the other ad refer to?

A. The rooms I had for rent.

Q. No, the first one.

A. My own duplex. I lived in my own duplex.

Q. You covered that one by the other ad, did you?

A. No. Maybe I am not understanding you correctly.

Q. Which duplex did the first one refer to, your own, or the one under consideration here in this suit?

(Testimony of Dorothy Sharp.)

A. The first one mentioned here, identified in red, is my own duplex; and——

Q. Where you were living, you were going to rent that?

A. I had considered it. Briefly, I would need to explain that, probably, to the Court. That ran the one day only. I had been advertising for several days—If I had the papers here, I could show The Independent people—if they brought their correct records of my whole advertising, they would show that (indicating) had been running, “Exceptionally private studio room for lady; clean quiet. Laundry, kitchen. Close in. Phone 64-1123.”

Q. That was the one involving your room?

A. Yes.

Q. And this (indicating) was the one in which you were [30] contemplating renting your own apartment?

A. Yes.

Mr. Scheir: Your Honor, I object to this whole line of testimony as being leading. I don't mind the witness answering the question, but I do object to the leading and suggestive questions.

The Court: Overruled.

Q. (By Mr. Matot): Now, Mrs. Sharp, when and where did you meet the tenants known as A. J. Lynch and Mrs. A. J. Lynch?

A. I believe the first time I seen them I was already in the duplex where the rooms are, and my—ordinarily, you will notice, in both ads I gave only my phone number, and I talk to people on the phone.

This was a very great exception, when my daugh-

(Testimony of Dorothy Sharp.)

ter answers the phone; and even though she knows I usually do that, I was in the other side of the house and I had been called back so often, and the people seemed to be very anxious, she said, so she gave the address, and they came right over.

I was there showing it to somebody else, and it seems before I left they came to the door, as I was leaving. I don't believe I talked to them at my house at all. I thought they wanted to see the rooms, and I remember very distinctly we were standing in the kitchen of the duplex in question, where the rooms are, when I realized they wanted to know about the duplex. They seemed to like the place, and I went ahead [31] and showed it to them.

And I would like a chance to explain to the Court, before this becomes confusing, about the ad on the duplex.

Q. Go ahead.

A. I put it in the night before. You can only cancel your ad up to twelve o'clock, but you can put them in up to four-thirty. I had, on the spur of the moment, decided I would move back where the rooms were, to that side, and rent the side I was in, which I had done four years previously. I put the ad in, but couldn't take the other out.

Meantime, I knew I had to hurry and make a quick decision and get it in before four o'clock for the deadline. So I done that, and couldn't take the other out. Then I decided, in the meantime, I would stay as I was, and when these people were already in the house, and they seemed to like it, I talked with

(Testimony of Dorothy Sharp.)

them about it, and they seemed to want it; and as far as the rooms go, I even had one person in there then where the rooms were.

Q. Go ahead. What was your conversation with the Lynches as to these rooms?

A. Well, I told them there were three rooms, and I said, "That is the only way my OPA are," and I said, "I don't care to change it on my set-up here." I said if they wanted to take the three rooms I didn't know of any reason why they couldn't. And I insisted—I wanted to show them the OPA, [32] and they said "No."

I said I was very tired looking after the three rooms, and it would give me a little rest, if they want to take them and assume all utilities and about one hour a week vacuuming through the center of the house, I would reduce——

Q. What was the OPA ceiling on those rooms at that time?

Mr. Scheir: I object to that. The official records are in evidence and speak for themselves.

Mr. Matot: Very well. May I have Defendant's Exhibit A.

Q. Will you look at this schedule and tell me what your OPA rental was on those rooms on June 1st of 1948?

A. Well, I am afraid I did not—This is the schedule for my rooms.

Q. What would that amount to by the month? ,

Mr. Scheir: I object to that, your Honor.

(Testimony of Dorothy Sharp.)

The Witness: The total was about ninety-five or ninety-eight dollars——

The Court: Just a moment.

The Witness: I am sorry.

Mr. Scheir: I object to that, your Honor. The records are in evidence and they speak for themselves.

Mr. Matot: She is testifying from the record, your Honor. [33]

The Court: Overruled.

Q. (By Mr. Matot): \$95.00 a month?

A. Well, it was over that.

Q. Well, it was at least \$95.00 a month under that schedule before you?

A. As I figured, the very least it could be—It made a difference how many people were in and according to whether they had kitchen privileges or not, so I never figured what the very least was, but it was around that.

Q. So you told them they could have it for \$75.00, which you figured was about \$20.00 under the OPA ceiling?

Mr. Scheir: I object to that, your Honor. It calls for a conclusion of the witness.

The Court: Overruled.

The Witness: My operating expenses were about eight——

Q. (By Mr. Matot): No, answer the question. Read the question, please.

(The question was read.)

A. Yes.

(Testimony of Dorothy Sharp.)

Q. And this is the lease you entered into with them for those rooms, Plaintiff's Exhibit 6?

A. Yes, this is the lease.

Q. Now, Mrs. Sharp, when did you get a letter or a command subpoena from the Office of the Housing Expediter after the execution of this lease? [34]

A. It was in January, 1949.

Q. And what matter did they call you in on?

A. On a matter of another rental. It was a matter of \$6.00 they claimed were overcharged.

Q. No mention was made about this Lynch arrangement at that time?

A. No. I never did receive any letters——

Q. When did you first hear about this Lynch situation?

A. After I was in the office and talked to him about this \$6.00, which he very quickly admitted was of very little merit, but then immediately took up the matter of the Lynches.

Q. I will show you here a document, the original of which is Plaintiff's Exhibit No. 3. Now, will you tell me whose handwriting this is in?

A. Well, this is the OPA that was made out, but I believe his name is Mr. Wilson in the OPA office, on January 14th. I dated it myself at the bottom, when I signed it.

Q. How did you come to sign that document, Mrs. Sharp? Tell us what happened.

Mr. Scheir: If your Honor please, I will object to this line of testimony inasmuch as it has been well established in an action of this kind the validity of

(Testimony of Dorothy Sharp.)

the order issued by the area rent office cannot be attacked unless the tenant has exhausted his administrative remedies. Unless that has been done, any effort to attack the validity of the order [35] is admissible.

The Court: Overruled.

Q. (By Mr. Matot): Go ahead and tell us.

A. Well, Mr. Wilson brought this up, and he said the people being related was the reason I couldn't rent to them. Well, I said I had never heard of any such ruling, and after all I dealt with the OPA for a good many years, so I asked to see it; and he hunted down and in the bottom drawer of the bottom of the desk he found a book, and in the middle of the paragraph, in very fine print, he read something that might have been interpreted that I couldn't. But I have never seen it published, and had no idea there was any such——

Q. Tell me what he said he was going to do to you if you didn't sign it.

A. Well, he was going to sue me, and what not. However, he led me to believe—He said that if I would sign it that he would—well, they would take it as though it were a new registration of an apartment and handle it as though it were. He led me to believe that, and they would establish, after a fair investigation, establish a ceiling.

Q. What else did he tell you about it? If you didn't sign it, what would he do? I want you to tell us about that.

A. Well, yes, he—Well, I was rather provoked

(Testimony of Dorothy Sharp.)

that I hadn't been sent any letter, and I asked why, and he couldn't explain why they hadn't sent me a letter all this time. [36] Always before I had received one from them very promptly. And I told him, "I have never rented it any other way. I don't see why I should have to change my OPA. Why are you making me do this when I have never rented it at any time during my ownership other than rooms?"

And he just said they would sue me if I didn't, and I had to.

Q. Later on you went back to file an appeal, didn't you? A. Yes.

Q. And what did this man tell you then?

A. Well, I made an appointment myself to talk to the head of the OPA, and I went in of my own accord to file an—I wanted to talk it over with him before I appealed their action in the matter, which was more than merely unfair. It was a matter of a great deal of spite and prejudice mixed in.

Mr. Scheir: Your Honor, I move that portion of the answer be stricken.

The Court: It may go out, the last part.

Q. (By Mr. Matot): What did he say you had to do before you could file the appeal?

A. I had to deposit the full amount of money with him or I couldn't file an appeal. That is printed on the back of the notice I received.

Q. Did anybody other than you hear him make that statement? [37]

A. There was no one with me. There was only his secretary in and out of the room. But that is

(Testimony of Dorothy Sharp.)

printed on the back of the form they sent me, that I had to deposit the money in order to make the appeal.

Q. I show you this document, and will you show me where it says anything about requiring you to——

A. It is not on that paper; it is another paper. You might not have that paper. It is one they sent me.

Mr. Scheir: I believe it is on the order itself, your Honor, which is Plaintiff's Exhibit No. 3. It is a photostatic copy of an order.

The Witness: I have 3.

Mr. Scheir: No, it is No. 4.

The Court: There is nothing on the back of 4.

Mr. Scheir: That (indicating) is the original.

Mr. Matot: Your Honor, I call your attention to the fact that this exhibit No. 4 is not a complete copy of the original.

Mr. Scheir: Your Honor, evidently the back was not photostated, in which event I will submit the original and ask leave to withdraw it at the conclusion of the trial.

The Court: That will be the order.

Q. (By Mr. Matot): Will you show me on the back of this order where it provides that you must deposit the amount of [38] the overcharge before you can appeal?

A. Just one moment. Well, it does list—I don't know if I am reading too hastily or if this is the one:

“Failure on your part to make the refunds within

(Testimony of Dorothy Sharp.)

the 30-day period above mentioned is a violation of the Rent Regulations and this Order and may subject you to suit for three times the amount.”

Q. Well, did he tell you——

A. He told me that, and I was sure I had read it on the back of one of the papers. He did tell me that, because that was one of the first things he said when we started to talking, that I had gone three days over the time to possibly refund, and we discussed the matter.

I said I didn't have the money to deposit, either. He didn't have anything to say to that, that I couldn't even appeal it because I didn't have the money to deposit.

Q. Did you sign this of your own free will, or did this man Wilson force you to sign it?

Mr. Scheir: I object to that. That calls for a conclusion on the part of the witness. The Court has heard the testimony concerning this conversation, and should make his own decision.

The Court: The question, as I understand, is “Did you sign this?” What do you mean this “this?”

Mr. Matot: I mean Plaintiff's Exhibit 3, which is the [39] registration certificate which she is alleged to have signed.

The Court: Is that your signature?

The Witness: Yes.

Mr. Matot: Will you read my question?

(The question was read.)

(Testimony of Dorothy Sharp.)

The Witness: I am willing to let it stand on whatever the Court thinks.

Q. (By Mr. Matot): What did you do? Did you sign that of your own free will or not?

A. No, I don't think you could say that possibly.

Q. You didn't want to sign it? A. No.

Mr. Scheir: If your Honor please, I object to counsel leading the witness. I also object to asking a question which calls for the conclusion of the witness.

Now, whether or not she was forced to sign it is a matter for determination by the Court. Being threatened with suit, in my opinion, is not coercion.

The Court: Overruled.

Q. (By Mr. Matot): Would you have drawn one of those up and signed it, of your own free will, and sent it in?

A. No. I am very sure if I had left the office I never would have made it out.

Q. This is in the handwriting of the officer of the OPA? A. Yes. [40]

Mr. Matot: You may take the witness.

Cross-Examination

By Mr. Scheir:

Q. Mrs. Sharp, did you read this registration statement before you signed it?

A. He asked me the questions, wrote it out himself, and pushed it to me.

Q. The information appearing on the registration statement is true?

A. Yes, I believe it is.

The Court: May I see that?

(Testimony of Dorothy Sharp.)

Mr. Scheir: May I have the lease, your Honor?

Q. Mrs. Sharp, how many rooms does this part of the duplex contain, that is, the part you rented to the Lynches?

A. Two bedrooms. It contains three rooms for renting, or, if used for a home, is generally considered as two bedrooms.

Q. How many rooms does the unit itself contain?

A. Five rooms.

Q. What are those rooms?

A. Living room, two bedrooms, or, in this case, it was used as a studio room and two bedrooms.

Q. What else?

A. Kitchen and bath, and an extra sitting room upstairs; we call it a den. [41]

Q. Are all the rooms located on one floor?

A. No.

Q. Two floors? A. Yes, sir.

Q. What is located on the first floor?

A. A studio, a kitchen, and bath.

Q. What rooms are on the upper floor?

A. Two bedrooms and a sitting room.

Q. These rooms were rented to the Lynches furnished, is that correct? A. Yes.

Q. What furniture did you have in the kitchen when the Lynches rented the place?

Mr. Matot: I object to that, incompetent, irrelevant and immaterial, and outside the issues raised here.

The Court: Overruled.

(Testimony of Dorothy Sharp.)

The Witness: The same as had always been there and is still there.

Q. (By Mr. Scheir): I wish you would explain what you mean by that. What furniture was there?

A. You want me to name each piece?

Q. Yes, if you can.

A. Stove, and refrigerator, table, and three chairs. The rest is built in.

Q. What furniture did you have in what you call the [42] sitting room?

A. A divan, chair, large library table, rugs, a desk and a small oval table.

Q. What furniture did you have in the rooms upstairs?

A. The bedrooms now? I was describing the sitting room upstairs.

Q. I mean the room downstairs. You have described the furniture in the kitchen. You say you have another room downstairs. What furniture is in that room?

The Witness: Would you mind if I say something?

The Court: Answer the question.

The Witness: All right, I will do it the hard way. Downstairs, in the studio room—which might have been called the living room, according to how they want to use it—was a studio divan, and there was a table—Oh, dear. I traded with them one piece of furniture.

The Court: Is there any contention, counsel, that these apartments weren't furnished?

(Testimony of Dorothy Sharp.)

Mr. Scheir: No. I am merely bringing out——

The Witness: I changed a piece of furniture.

Mr. Scheir: ——the way the apartments were furnished, to show it was rented as an entire unit.

Mr. Matot: I don't see how you can show that by this testimony.

The Court: I don't see how this is material. [43]

The Witness: It had a dresser in it when they took it, in the studio room, and for their convenience I took it out and gave them a table they could make a dining room, since they had no dining room.

Q. (By Mr. Scheir): Mrs. Sharp, will you point out to me the ad which you read to the Court before when counsel was questioning you?

A. Yes (indicating). "Exceptionally private studio room for lady; clean, quiet. Laundry. Kitchen. Close in. Phone 64-1123."

Q. Which room did that ad pertain to?

A. The studio room. It was a living room, or, if used as a family dwelling, it would be used as a living room, naturally.

Q. To which apartment did the other ad pertain?

A. To my own home.

Q. You never moved from that apartment, did you? A. No.

Mr. Matot: I object to that, incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Scheir: You may answer the question.

The Witness: I answered it "No."

Q. (By Mr. Scheir): Now, I call your attention

(Testimony of Dorothy Sharp.)

to the lease which you entered into with Mr. and Mrs. Lynch, which [44] lease bears your signature. I call your attention to that part of the lease which reads, "Lower room—Upper front—Upper middle—Upper rear." Which one was the upper room?

Mr. Matot: I object, incompetent, irrelevant and immaterial because the lease speaks for itself.

The Court: Overruled.

Q. (By Mr. Scheir): Which was the lower room? A. The studio room. Those——

Q. Just a minute. Which one was the upper front?

A. That was the upper front bedroom.

Q. Which was the upper middle?

A. The room referred to as the sitting room. It at one time had an OPA on it.

Q. Which was the upper rear?

A. Upstairs rear bedroom.

Q. The lease further reads, "Including kitchen and bath." Were there any rooms in addition to these rooms in the apartment?

Mr. Matot: I object to that, incompetent, irrelevant and immaterial.

The Court: Overruled.

The Witness: No.

Q. (By Mr. Scheir): So that at the time you advertised the studio room for rent, you had no other room other than the rooms which appear on this lease and which you rented to the [45] Lynches, is that correct?

(Testimony of Dorothy Sharp.)

A. In that, no other rooms for rent except in that unit.

Q. By this lease you rented the entire unit to the Lynches, is that correct?

A. That would have given them possession if they rented all three rooms.

Q. In other words, the Lynches had the entire unit; there was no other space left that they did not occupy in that unit, is that correct?

Mr. Matot: I object, your Honor, incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

The Court: Overruled.

The Witness: That is correct.

Q. (By Mr. Scheir): Now, Mrs. Sharp, who paid for the utilities while the Lynches were living at 430 Daisy Avenue?

A. Well, I paid for—They paid their own electric bill and gas bill for their cooking and heating. I furnished the hot water, except they paid one month. They paid \$1.00 for one month.

Q. There was a separate meter for this apartment, was there not, for the gas and electricity?

A. Yes, and I furnished the water.

Q. Is that correct, there was a separate meter?

A. Yes. [46]

Q. And the Lynches paid for the gas and electricity which was shown on that meter, is that correct?

A. Yes.

Mr. Scheir: I have no further questions.

Mr. Matot: No questions.

(Testimony of Dorothy Sharp.)

The Court: May I ask the witness a question?

Mr. Matot: Certainly.

The Court: You had a duplex, and you occupied one side and rented the other?

The Witness: Yes.

The Court: Which side did you occupy?

The Witness: 428 Daisy is my residence.

The Court: What is 537?

The Witness: That is on Melrose Way, on a side street, a small apartment that faces the side street, Melrose Way.

The Court: Is that a different building?

The Witness: Yes, a different building.

The Court: And this at 430 was a duplex?

The Witness: Yes.

The Court: And you occupied one side and you rented the other?

The Witness: Yes, as rooms. Under OPA, as rooms only. I have never had——

The Court: Was it under OPA as an apartment in——

The Witness: Before the Lynches moved [47] in?

The Court: Yes.

The Witness: No, it wasn't. I had lived there four years myself.

The Court: Did you ever rent it as an apartment?

The Witness: No, never. I moved out in 1946 to 428 Daisy. I fixed it up to rent as rooms, and I never rented it in any other way.

(Testimony of Dorothy Sharp.)

The Court: Do you rent the other side as an apartment?

The Witness: The side I was living in, 428 Daisy, had been a single family dwelling.

The Court: How much did you get for that?

The Witness: That OPA in '42 was fifty-five.

The Court: \$55.00?

The Witness: Yes. The two are quite different. That is all on the lower floor, and the other is upper and down, and there is quite a bit more square footage on that side.

The Court: Did you own the apartment when it was originally registered with OPA?

The Witness: Yes, I did.

The Court: And was 430 Daisy listed as rooms at that time?

The Witness: No, that was—there was no listing, because it wasn't under OPA when I bought it.

The Court: You were living in it?

The Witness: Yes. [48]

The Court: When you moved out of it, did you list it as rooms or did you list it as an apartment?

The Witness: As rooms. I have in a valise—I guess I left it in the car—the original registration on rooms, the very first one, prior to the one we have in court today. That brought considerably more than that originally, and that has on it the date of the original registration of rooms—I believe it was August, 1946—when I moved out. I had lived there four years, and moved out of it, and

(Testimony of Dorothy Sharp.)

registered it as rooms at that time. That was the original registration.

The Court: Maybe, if it was registered as rooms originally, the plaintiff has a copy of the registration.

Mr. Scheir: We have, your Honor; but inasmuch as the maximum rents shown on this registration statement have been changed by order, we did not offer it in evidence. However, I have it here, if the Court wishes to see it.

The Court: I think the question here is whether this was registered as rooms or an apartment.

Mr. Scheir: No, the question is, how were these housing accommodations rented to the Lynches?

Mr. Matot: No, your Honor, that wouldn't be the point at all.

Mr. Scheir: Housing accommodations may be rented——

The Court: I don't agree with you. I think your lease is subject to the rent control, and it depends a great deal as to what the ceiling price was. [49]

Now, we have one registration showing it was registered as an apartment at \$75.00 a month, but that evidently was in 1949—or a 1948 registration, June 11, 1948. Now, what was the status before June 11, 1948?

Mr. Scheir: Before June 11, 1948, individual rooms had been rented out to individual people. The house accommodations had been rented as rooms under the rooming house regulation.

(Testimony of Dorothy Sharp.)

Here we have a different situation. We contend the place was rented as a unit, therefore it had to be registered under the housing regulations.

We have two regulations; one is for rooms in a rooming house, and one is for apartments. Therefore we obtained a registration statement from the defendant here registering the apartment as an apartment.

The Witness: After they had possession——

The Court: Can you agree that before June 11, 1948, the housing accommodations were rented out as rooms?

Mr. Scheir: We have no way of knowing otherwise. We agree that up until the time the Lynches rented the apartment the place had been rented as individual rooms. It had been registered under the rooming-house regulations.

Now, when the house is rented as an entire unit, it must be registered under the housing regulation.

The Court: Let me see that. [50]

Mr. Matot: Let me call your Honor's attention——

The Court: Just a minute.

Mr. Matot: Certainly.

The Court: Was this registration, which is Exhibit 3, was that obtained after the premises were leased to Mr. and Mrs. Lynch?

Mr. Matot: Seven months after.

The Court: Just a minute, Mr. Matot. I am talking to counsel.

Mr. Matot: Pardon me.

(Testimony of Dorothy Sharp.)

Mr. Scheir: Yes, your Honor, it was.

The Court: Now, can you tell me when it was obtained? I have a date here, "Date first rented June 11, 1948," but when was this obtained, do you know?

Mr. Scheir: This was obtained, your Honor, January 14, 1949. The defendant has testified she put the date on here after she signed or at the same time she signed the registration statement.

Now, in that connection,——

The Court: In other words, then, until January 14, 1949, these were rooms?

Mr. Scheir: They had been rented as rooms, yes, your Honor.

The Court: And this was retroactive back to June 11th?

Mr. Scheir: To the date of first renting as an apartment. [51] We did not go beyond June 11th, because the Lynches were the first ones who rented it as an apartment, on June 11th.

The Court: Now, Exhibit 4, which is the order decreasing rent, that was issued March 23d?

Mr. Scheir: That is correct, and was made retroactive to the date of the first renting as an apartment, which was June 11, 1948, I believe.

In that connection, your Honor,——

The Court: I am not interested in argument now. I am interested in trying to find out what the facts are. I am trying to find out what the facts are, then I can come to some conclusion; but I can't unless I know what the facts are.

(Testimony of Dorothy Sharp.)

Mr. Scheir: I have no further questions of this witness, your Honor.

Mr. Matot: I have no further questions.

The Court: You may step down.

(Witness excused.)

Mr. Matot: My other witness stepped out. May I step out of the court room and see if I can find him?

The Court: Yes, you may.

Mr. Matot: One of my witnesses went to the car across the street to get those papers. I wonder if we can recess for five minutes.

The Court: We will take a recess but, before we do that, [52] have you got the original registration on rooms? I notice on Exhibit 3 it says, "This unit formerly rented as rooms."

Mr. Scheir: Yes, I have, your Honor.

The Court: I wonder if you would mind introducing it in evidence.

Mr. Scheir: Your Honor, may I again ask leave to withdraw the original at the conclusion of the trial?

The Court: Yes.

The Clerk: No. 9.

(The document referred to was marked "U. S. Exhibit No. 9," and was received in evidence.)

The Court: May I clarify something, too. My understanding from your statement is that these rooms had been rented prior, but had been rented to different individuals?

Mr. Scheir: That is correct.

The Court: Then, instead of renting rooms to different individuals, they rented all the rooms to the Lynches?

Mr. Scheir: To the Lynches; that is correct.

The Court: Then I assume it is your contention that because all the rooms were leased to one party instead of to three different parties, or four, it immediately changed the complexion of the renting from rooms to an apartment?

Mr. Scheir: That is correct, your Honor. Under the rooming-house regulation only rooms could be rented. So as the complexion of the thing was changed to an apartment, [53] if it could not come under the housing regulation it would be uncontrolled.

Mr. Matot: Let me say, your Honor, supposing you were living at the Biltmore under the rooming regulation, and your wife moved next door, do you mean that would change those two rooms to an apartment? I say, "No."

The Court: Is your witness in court now?

Mr. Matot: Yes.

ALBERT ABRAMS

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Albert Abrams.

Mr. Matot: You should apologize to Judge Westover for wandering out of the court room.

(Testimony of Albert Abrams.)

The Court: He doesn't have to apologize.

Go ahead; let's get this over with.

Direct Examination

By Mr. Matot:

Q. Mr. Abrams, do you know Dorothy Sharp?

A. I do.

Q. How long have you known her?

A. I would say about five years.

Q. Did you go to the Office of the Housing Expediter in the City of Long Beach on or about the 14th day of January, [54] 1949?

A. Yes.

Q. Were you present there when Mrs. Sharp signed a registration?

A. I was there when she was supposed to sign it. Now, she signed it on the other side of a partition from me.

Q. But did you hear the conversation——

A. I did.

Q. ——between Mrs. Sharp and this other man?

A. I did.

Q. Will you tell us what the conversation was?

Mr. Scheir: I object to that, your Honor, again on the ground the validity of the order cannot be attacked in this action unless the administrative remedies have been resorted to first.

The Court: Overruled.

The Witness: Well, I tell you, I will try and be just as brief on this as I can, your Honor. I went in there with Mrs. Sharp about two o'clock, and had an appointment at four, and I listened for pos-

(Testimony of Albert Abrams.)

sibly an hour or an hour and a half, and I became very uneasy because of this appointment, and sent a note in.

Up to that time I can't truthfully say I had overheard any of the conversation except just in a mumble, or a tone I couldn't understand, at least. [55]

When I sent this note in, Mrs. Sharp told me afterwards it disturbed her very greatly.

Mr. Scheir: I object to that as hearsay.

The Court: Hearsay. Objection sustained.

Q. (By Mr. Matot): Just tell us what you heard Mrs. Sharp say and what this gentleman said.

A. This gentleman at that time assured Mrs. Sharp if she wouldn't sign the papers——

Mr. Scheir: I object to that. The gentleman has not been identified,——

The Witness: I could identify the gentleman.

Mr. Scheir: ——and, as far as the witness is concerned, hearsay.

The Court: Overruled. Just give us the conversation.

The Witness: He was very persuasive in telling her if she wouldn't sign the papers they would come down there and go in and put a ceiling on it anyway.

At that time I believe they had started to the door, and in the meantime Mrs. Sharp had signed the papers, apparently, because they came out and stood at the railing where we stood, and he said, "Mrs. Sharp, it is good you signed it. I think we would have forced you to sign it anyway."

(Testimony of Albert Abrams.)

Q. Mr. Abrams, what is your business or occupation?

A. I am a broker, real estate broker.

Q. How long have you been a broker? [56]

A. About twenty-five years.

Q. How long in Long Beach?

A. Since 1925.

Q. Do you live in the neighborhood where this property is located? A. I do.

Q. Are you acquainted with the neighborhood?

A. Very much so.

Q. Do you know the value of real estate?

A. Yes.

Mr. Scheir: I will object, your Honor, to this line of questioning, inasmuch as the opinion of the witness as far as the rental value of the property is immaterial in this action.

The Court: I will overrule your objection to this particular question. The question is, does he know values, and his answer is "Yes." I am not cutting you off from making your objection.

Mr. Scheir: Thank you.

Q. (By Mr. Matot): Could any property of the nature of this, in that neighborhood, have been rented at this time for \$37.00 a month?

Mr. Scheir: I will object to that, your Honor. We are not attempting to set the maximum rent here.

The Court: Sustained.

Mr. Matot: Your Honor, I want to show this, and this is [57] my reason: I understand ordinarily

(Testimony of Albert Abrams.)

an order of the OPA can not be collaterally attacked. I know that. But in this case, where we lay a foundation to impeach an order, then I think we should be able to show that she was treated maliciously.

The Court: Well, Mr. Matot, I can't agree with you. I don't think the question whether it was reasonable rental has any place in this case at all.

Mr. Matot: Very well.

The Court: The ruling still stands.

Mr. Matot: Very well.

I think that will be all.

Mr. Scheir: I have no questions.

The Witness: Thank you. I am sorry I went out.

(Witness excused.)

Mr. Matot: That is our case, your Honor.

The Court: I think we will take a little recess. We will recess until five minutes after three.

(Short recess taken.)

The Court: I think I know the theory of this case pretty well. Maybe I better hear from Mr. Matot first.

Mr. Scheir: Your Honor, I was going to put on a witness on rebuttal.

The Court: Oh, very well. Go ahead. I thought you had finished.

Mr. Scheir: Mrs. Lynch, will you take the [58] stand?

LAVONNE LYNCH

recalled as a witness by and on behalf of the plaintiff, in rebuttal, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Scheir:

Q. Mrs. Lynch, you heard Mrs. Sharp testify that the ad you read in the newspaper pertained to 428 Daisy rather than 430?

A. That is correct.

Q. When you visited Mrs. Sharp and were shown 430 Daisy Avenue, did she show you 428 at all?

A. She did not.

Mr. Matot: Wait a minute. I think that is not proper rebuttal.

The Court: Overruled. The answer is "No."

Mr. Scheir: I have no further questions.

Mr. Matot: No questions.

The Court: All right, you may step down.

(Witness excused.)

Argument on Behalf of the Defendant

Mr. Matot: If your Honor please, I have been handling OPA work ever since 1942, and this is the first instance in which I find two different ceilings in a case. I think the [59] evidence is clear that Mrs. Sharp was called into that office for another matter. I don't think any proper proceedings were taken under the Act to change the registration from single room units to apartment units.

I think you will find in the Act, your Honor, that property can be registered one way or the other but not registered both ways. Your Honor can see more confusion would result if we permitted that kind of a situation to go on. Who would know what the ceiling price was?

As I called to your Honor's attention a while ago, suppose I had been living at the Biltmore, as a single man, and my wife moved in next door, and we got married: If Mr. Scheir's contention is good and sound, then we could force the hotel to change that from rooms to an apartment because my wife and I got married.

Now, I don't think that is good logic. I don't think the mere fact that a man and a woman are married would have any effect upon a registration already made.

Your Honor has before him the complete record to show that the property was already registered as rooms. Do you mean to tell me that because these two people were married that *ab initio* it became an apartment?

The record shows when the Lynches rented this property this lady cut the rent down \$20.00 under the then existing ceiling, so she could not be charged with any violation. [60]

The Act is not only for the protection of the tenant, but also for the protection of the landlord. If she did not charge anything over the ceiling, she should be protected. If we permit a situation of this kind, then if a party had a couple of rooms and married people moved in, why, the first thing he

knows, he would be obligated to reduce their rent, or suffer damages.

I don't think that was the intent that Congress had in mind, to destroy the landlord. The intent was to prevent a landlord from overcharging people rent. And there was no overcharge in this matter until January of 1949, about seven months after the lease ended.

How, under the regulations, could the OPA have changed that registration unless they got the landlord to sign the new registration? There is no machinery in that Act that I am conversant with that they can do that unless they could by some means get her to sign a new registration, which, I think your Honor realizes, they were out to do. They got her down on another violation—not about this case—and then they shoved these papers before her, which they make out themselves, and make her sign it. She is taken completely by surprise; and your Honor knows women are not constituted as men.

If they tried to put that over on me or over on the Court, they would know better right now. Nobody would [61] make me sign a paper or your Honor sign a paper if we did not want to. But they take a woman in there, who is trying to raise a daughter by herself, and proceed to give her a working over. I think it is a great business by some of the people down there to put the "squeeze" on this woman.

Renting a two-story apartment for \$37.00 a month in Long Beach,—it shows on the face of it. I am not charging the Housing officer with doing any-

thing wrong, but I am saying that some of the officers at Long Beach got a peeve on and were out to clean up on this woman.

I wish your Honor would keep in mind the Office of Price Administration can not change that registration without getting her to sign some document. There is no other way under the Act they can do it.

The mere fact two people are married and living in rooms wouldn't, *ab initio*, change it from one type of apartment to another kind. That can only be done by proceedings for that purpose. There is no such proceeding whatsoever here. The only thing they have got is a registration, which they prepared themselves and made her sign.

\$37.00 a month! She said she rented the other side, under OPA, for \$55.00 a month, and it is not as big as this. Your Honor, there is something wrong; there is something awful wrong. It shows intent. I say to your Honor that [62] we have two completely different registrations on this property, and that is not permissible, under the original Act or under the amendatory Act thereto. There is not one line that they have a proceeding to vacate the original order and proceed to re-register it. It couldn't be done this way. It is the same as having a case before your Honor with two judgments in it. Your Honor would never sign two judgments in the same case. I know your Honor too well from other things.

It is my opinion that the defendant should have judgment in this matter. I don't think there is any proof to support their charges.

Why hasn't a landlord a right to depend on a ceiling rate without being subjected to overcharge by another Act changing it? Where is your protection? What was the woman to do? She had three rooms ready, and she wanted to rent them. She tried to cut the rent below the ceiling, when she could have got more. I think, your Honor, we should have a judgment.

Argument on Behalf of the Government

Mr. Scheir: Your Honor, it is not uncommon, in housing accommodations, to have more than one maximum rent, and that is why we have two regulations, the one the rooming house regulation and the other the housing regulation. [63]

The rooming house regulation, Section 825.81 (b) (iv), exempts the following housing from the provisions of its regulations:

“Entire structures or premises, as distinguished from the rooms within such entire structures or premises.”

In Section 825.81 of the rooming house regulations a room is described as follows:

“ ‘Room’ means a room or group of rooms, not constituting an apartment, rented or offered for rent as a housing accommodations unit in a rooming house, hotel or other establishment.”

In the same section, an apartment is defined as follows:

“ ‘Apartment’ means a room or rooms providing facilities commonly regarded in the

community as necessary for a self-contained dwelling unit, and of a class of accommodations customarily rented without variations in rent dependent on terms of occupancy and number of occupants: Provided, however, That a self-contained dwelling unit containing a kitchen and bath shall be deemed an apartment.”

Now, Section 825.81 exempts from the regulations all those housing accommodations except rooms in a rooming house.

Now, under the housing regulation, Section 825.1 (a) [64] (iii), the housing regulations exempts from its control “Accommodations subject to the Rent Regulation for controlled rooms in rooming houses and other establishments.” In other words, what is not controlled by one is controlled by the other. The Rooming House Regulation definitely states it applies to rooms in rooming houses, not structures or premises; and the Housing Regulation provides that it does not pertain to rooms in rooming houses but to all other housing accommodations.

Under Section 825.4 (c) of the Housing Regulation, it provides:

“For controlled housing accommodations first rented on or after July 1, 1947, the maximum rent shall be the first rent for such accommodations. Within 30 days after so renting, the landlord shall register the accommodations as provided in Section 825.7. The Expediter may order a decrease in the maximum rent as provided in Section 825.5 (c) (1) and (6).”

Now, under Section 825.7, entitled "Registration Statement," it says:

"Every landlord of controlled housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor, to be known as a registration statement, * * *. [65] The original shall remain on file with the Expediter and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord."

Now, counsel for the defendant has attempted to show that the defendant was coerced into signing this registration statement. I cannot agree with him, because a person can not be coerced into doing something she is required to do by law. And I might point out that even though I don't like to file an income tax return, I do it, because if I don't I am threatened with certain punishment.

So, as regards the attack on the validity of the order of an Area Rent Director, your Honor, I would like to point out the case of *Babcock v. Koepke*, 175 Federal (2d), decided by the United States Court of Appeals for the Ninth Circuit on July 24, 1949. That was an action in which the landlord had attempted to obtain an injunction against the Area Rent Director, from issuing certain orders, and the Court held as follows, and I will quote from the opinion:

"His"—meaning the landlord—"reason for not seeking relief in the proceeding commenced

by the appellee's notice to him is that, if the appellee held adversely to him and issued his rent reduction order, appellant could have that order stayed and reviewed only [66] if he deposited by certified check or money order payable to the United States Treasurer the full amount of the refund as required by Regulation 840.11. In effect, his argument is that it is grossly inequitable requirement of a litigant to deposit before litigation the total amount of the judgment in cash, to be held by the adjudicating tribunal and if he is successful to be returned to him without interest while so wrongfully deprived of its use.

"He claims that he did not have the cash to purchase such check."

Now the Court held:

"We admit there is much force in this contention, and though we do not decide its merit, are puzzled why so drastic requirement is made when the giving of security would accomplish the desired purpose.

"We think, however, that appellant could have presented his contention of non-control under the Section cited *supra*, and that he failed to exhaust his administrative remedy by not so acting. If he there had prevailed, there would be no occasion to invoke the challenged provisions of 840.11."

That was decided by the Ninth Circuit on June 24, 1949, and I point that out to the Court, inasmuch as the defendant in this case had failed to avail her-

self of the administrative [67] remedy as set out in Procedural Regulation No. 2.

May I have that order, No. 4 I believe it is.

This order, your Honor, was issued when Procedural Regulation No. 1 was in effect. The order itself contains a provision requiring refund to the tenant, and says,

“Any rent collected from the effective date of this Order in excess of the amount provided in this Order shall be refunded to the tenant within 30 days from the date this Order is issued unless the refund is stayed in accordance with the provisions of Rent Procedural Regulation No. 1.”

The defendant failed to avail herself of those Rent Procedural Regulations providing for an appeal, and therefore at this time can not challenge the validity of this order.

Now, in the case of *Woods vs. Stone*, 68 Supreme Court, 624, the Court commented on the order to refund and the retroactive feature of the order, and this is what the Court said:

“Under the system of rent control as established, a landlord is required to register rented accommodations within thirty days after they are first devoted to that use. This brings notice to the control authority that the premises are within its official responsibility and provides data for quick, if tentative, determination [68] as to whether the rental exacted exceeds the level permitted by the policy of Congress set out in the statute.

“But when, as in this case, the landlord does not comply with this requirement, there is likelihood that, as happened here, his transaction will be overlooked for some time or perhaps escape scrutiny entirely. But the landlord is not allowed thus to profit from his own disobedience of the law. If he could keep the excess collections by thus retarding or preventing scrutiny of his contract, he would gain an advantage over all landlords who complied with the Act as well as over tenants whose necessity for shelter is too pressing to admit of bargaining over price. The plan therefore provides that, despite his failure to register, the landlord may continue to collect his unapproved price, but only on condition that it is subject to revision by the public authority and to a refund of anything then found to have been excessive.”

That was the decision of the Supreme Court in the case of Woods vs. Stone.

Now, your Honor, getting back to the facts in this case, there is no question but this unit was rented as an entirety to the members of one family, consisting of Mr. Lynch, Mrs. Lynch, and her 16-year-old daughter. [69]

The evidence shows—and this is admitted by Mrs. Sharp—that the Lynches paid for the utilities as the utilities were billed on a meter. That is unusual where a tenant rents a room in a rooming house. A tenant renting a room in a rooming house is furnished with utilities, and doesn't have to pay for whatever the meter shows.

There is no evidence in this case, your Honor, that any people other than the Lynches occupied the apartment; and it is our contention it was rented to them as an entire unit, and subject to the Housing Regulation, and subject to the maximum rent established by the order decreasing the rent and requiring refund to the tenant. Therefore, we submit judgment should be for the plaintiff as prayed for in the complaint.

Mr. Matot: Let me say one thing, if I may.

The Court: Will you wait a minute. I want to ask counsel a question, if I may.

Mr. Scheir: Yes, I will be glad to answer.

The Court: Supposing this was a new building and had never been rented at all until the date of this lease: Would they have to file a registration?

Mr. Scheir: I will have to check the regulation, your Honor.

The Court: Under the law, aren't new buildings exempt?

Mr. Scheir: New construction, yes, completed after, I [70] believe it is, February 1, 1947.

The Court: Well, suppose this wasn't a new construction? Suppose this was an old construction, and had never been rented at all?

Mr. Scheir: It would have to be registered, your Honor.

The Court: It would have to be registered?

Mr. Scheir: Yes. Under the Regulation, certain accommodations are exempt, and among the exempt accommodations are those consisting of new construction built after February 1, 1947. On housing

accommodations, even though they had never been rented and were occupied by the landlord up to the day of this lease, the maximum rent—I will read this section:

“For controlled housing accommodations first rented on or after July 1, 1947,”——

And this renting took place in June,——

The Court: What is your citation?

Mr. Scheir: 825.4(c) of the Housing Regulation.

“——the maximum rent shall be the first rent for such accommodations. Within 30 days after so renting, the landlord shall register the accommodations as provided in Section 825.7. The Expediter may order a decrease in the maximum rent as provided in Section 825.5(c) (1) and (6).”

That takes care of housing accommodations which were never [71] rented prior to July 1, 1947, but which were in existence before that date,—February of 1947.

The Court: All right. Mr. Matot?

Mr. Matot: That argument is all right, your Honor, as far as it goes, but it doesn't go far enough, for this reason: This property was registered. It was registered over five years ago, as rooms. It was registered. Those cases have to do with property where there has been no registration filed. We are registered here.

That is the vice of the situation. If we had been guilty of failing to register, that would have been one thing; but no, we registered, and we gave a

lease for less money than we could have done under the registration, and I think we are entitled to the protection of the Court.

The Court: Well, I thought this was a rather simple case, that is, until this afternoon, when you have injected another theory into the case. So before making the decision, I want to read some authorities.

I will take the matter under submission.

Mr. Matot: Thank you, your Honor. I told you there was a serious question of law here.

The Court: I don't know, it may be serious. We will see.

Mr. Matot: I hope your Honor will keep in mind we have two adverse orders in this property.

The Court: I will keep all this in mind.

Mr. Scheir: I wondered if we were going to cite some more cases, because if we are I would like to cite a case.

The Court: If you have any cases that apply, you may do so.

Mr. Scheir: The case I have is Woods vs. Macken, decided by the United States Court of Appeals for the Fourth Circuit, No. 5941, decided December 19, 1949. I don't have the citation.

The Court: December 19, 1949?

Mr. Scheir: Yes.

The Court: And the name?

Mr. Scheir: Woods vs. Macken.

The Court: United States Supreme Court?

Mr. Scheir: United States Court of Appeals for the Fourth District.

I would like to point out to the Court that in the opinion there is a reference to an interpretation, and I think the reference covers the interpretation itself, so I don't have to submit it to you.

The Court: I will see if I can find the case.

Mr. Matot: That case doesn't apply to this situation. I have studied it thoroughly.

The Court: Mr. Matot, I will read the case and decide whether it does. [73]

Mr. Matot: I know, your Honor.

The Court: We will stand adjourned.

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Fresno, California, this 27th day of July, A.D. 1950.

/s/ FRANCES D. BUCK,
Official Reporter.

[Endorsed]: Filed August 1, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 43, inclusive, contain the original Complaint; Answer; Plaintiff's Request for Admissions; Answer to Request for Admissions; Memorandum of Opinion and Order for Judgment; Amended Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal, Statement of Points on Appeal and Designation of Record on Appeal which, together with copy of Reporter's Transcript of proceedings on February 25, 1950, and original plaintiff's exhibits 1 to 9, inclusive, and original defendant's exhibit A, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 1st day of August, A.D. 1950.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12634. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Dorothy Sharp, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed August 3, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12634

STATEMENT OF POINTS ON APPEAL
UNITED STATES OF AMERICA,
Plaintiff-Appellant,
vs.

DOROTHY SHARP, DOES I TO X,
Defendant-Appellee.

The following are the points upon which the appellant intends to rely upon appeal:

1. The Court below erred in finding that the maximum rent was approximately Ninety Dollars (\$90.00) per month and not Thirty Seven Dollars and Fifty Cents (\$37.50) as established by order of the Area Rent Director.

2. The Court below erred in failing to give full

force and effect to the order of the Area Rent Director establishing the maximum rent.

3. The Court below erred in finding that the previous maximum rent established under the rooming house regulation could not be and was not changed by order of the Area Rent Director.

4. The Court below erred in failing to accept the validity of the order of the Area Rent Director in the absence of proof that the defendant had exhausted her administrative remedies.

5. The Court below erred in failing to enter judgment for the overcharge which the defendant collected as a cleaning charge and for the use of a bed.

6. The Court below erred in failing to find that the plaintiff had established the overcharges by substantial evidence.

7. The Court below erred in refusing to enter judgment in favor of the plaintiff as prayed for in the Complaint.

Dated this 9th day of August, 1950.

/s/ FRANCIS X. RILEY,
Attorney for Appellant.

[Endorsed]: Filed August 16, 1950.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD

Appellant, United States of America, hereby designates the following portions of the record to be printed on appeal:

1. Complaint filed July 15, 1949.
2. Answer filed January 4, 1950.
3. Plaintiff's Requests For Admissions filed January 16, 1950.
4. Defendant's Answer to Plaintiff's Request for Admissions filed January 25, 1950.
5. Memorandum Opinion and Judgment Order filed March 16, 1950.
6. Amended Findings of Fact and Conclusions of Law filed May 10, 1950.
7. Final Judgment entered May 10, 1950.
8. Transcript of Testimony.
9. Plaintiff's Exhibits 1 to 9.
10. Defendant's Exhibit A.
11. Notice of Appeal filed July 6, 1950.
12. Statement of Points relied on.
13. This designation.

Dated this 9th day of August, 1950.

/s/ FRANCIS X. RILEY,
Attorney for Appellant.

[Endorsed]: Filed August 16, 1950.

